

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

JUNE 12, 1997

RECEIVED

JUN 12 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (PARKER)
FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN PARKER) *mo's*
DIVISION OF WATER & WASTEWATER (REDEMANN) *bbm*
RE: DOCKET NO. 961343-WS - BONITA SPRINGS UTILITIES, INC. -
PETITION BY SOUTHERN PINES HOMEOWNERS OF BONITA SPRINGS
INC. TO RESCIND EXEMPTION GRANTED TO BONITA SPRINGS
UTILITIES, INC.
COUNTY: LEE
AGENDA: JUNE 24, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961343WS.RCM

DOCUMENT NUMBER-DATE

05877 JUN 12 5

FPSC-RECORDS/REPORTING

DOCKET NO. 961343-WS
JUNE 12, 1997

CASE BACKGROUND

Bonita Springs Utilities, Inc. - (Bonita Springs or utility) is a non-profit association which provides water and wastewater service in Lee County to approximately 19,542 water and 12,213 wastewater customers. The financial statement of Bonita Springs for 1994 shows that the annual operating revenue from water and wastewater is \$5,320,144. The utility is presently exempt from Commission jurisdiction.

The Commission acknowledged Bonita Springs' exemption from regulation of its water system in Dockets Nos. 690404-W, 70337-W, 70145-W and 8188-W by Order No. 5223, dated June 7, 1971. Bonita Springs was granted a wastewater exemption in Docket No. 910604-SU, by Order No. 24921, dated August 16, 1991. These orders indicated that service would be provided only to members of the corporation.

On November 12, 1996, the Southern Pines Homeowners of Bonita Springs, Inc. (Southern Pines or homeowners) filed a petition to rescind the exemption granted to Bonita Springs. The petition states that the exemption from the Florida Public Service Commission regulation was based on the assumption that Bonita Springs was a non-profit cooperative providing service solely to members who own and control such cooperatives. Southern Pines alleges that Bonita Springs provides water and wastewater service to many individually metered and billed customers who are denied membership in the Corporation. Southern Pines states that Bonita Springs collects water and wastewater revenues in excess of the corporation expenses and these excess revenues are dispensed in the form of capital credits to the corporate members, but that Southern Pines' members do not receive any share of these capital credits. The homeowners also request that the Commission review BSU's operations, audit its books, and "reassign the already distributed capital credits to every customer on a fair and equitable basis."

The Commission Staff received information from the homeowners, including the utility's bylaws, its corporate structure, financial statements, newspaper articles, and documents relating to BSU's rate proceeding before Lee County. Staff also sent inquiries to the utility and homeowners. This recommendation reviews the information provided and addresses whether the Commission should require BSU to obtain a certificate of authority from the Commission, thus rescinding BSU's exempt status. An appendix of materials and correspondence which are discussed in this recommendation is attached.

DOCKET NO. 961343-WS
JUNE 12, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Southern Pines Homeowners' Petition to rescind the exemption of Bonita Springs Utilities, Inc.?

RECOMMENDATION: BSU's current policies and 1995 amendment of its by-laws indicate that the utility is providing service to customers who are not members of the non-profit corporation. However, BSU should be given 60 days from the date of the order to either revise its by-laws to comply with the requirement of Section 367.022(7), Florida Statutes, that it only provide service to its members, or apply for an original certificate with the Commission. A show cause action should only be considered if BSU fails to attain compliance with the statute, or fails to apply for an original certificate. (O'SULLIVAN PARKER, REDEMANN)

STAFF ANALYSIS: Bonita Springs was granted a water exemption in Docket No. 690404-W, 70337-W, 70145-W and 8188-W by Order No. 5223, dated June 7, 1971. The order stated:

Chapter 71-278, Laws of Florida became effective on September 1, 1971. Paragraph (b) of Subsection 367.021(2) provides: Not subject to regulation by the commission as a utility are non-profit corporation, associations or cooperatives providing service solely to members who own and control such non-profit corporation, associations or cooperatives.

Bonita Springs was granted a wastewater exemption in Docket No. 910604-SU, by Order No. 24921, dated August 16, 1991, under Section 367.022(7), Florida Statutes. That order affirmed Bonita Springs' water system exemption and required the utility to file a copy of the amendment to its By-Laws, so that only members would be served. The order required Bonita Springs to inform the Commission of any change in circumstances or method of operation so that its exempt status could be reviewed. (Attachment, pgs. 84-5)

BSU serves the residents of the Southern Pines Subdivision, whose residents own their homes, but not the lots of their subdivision. BSU directly bills the homeowners, and responds to their inquiries regarding billing or service quality. (Attachment, pg. 53) According to the petition, the subdivision developer transferred the billing account to each homeowner, but the homeowner was denied membership in the corporation because he or she did not own the land upon which their homes were situated.

DOCKET NO. 961343-WS
JUNE 12, 1997

Southern Pines alleges that even though Bonita Springs provides water and wastewater service to many individually metered and billed customers, those customers are denied membership in the Corporation. (Attachment, 1-3). BSU asserts that the owner of the lot or subdivision has membership in BSU, but not the individual homeowners.

According to Section 367.022, Florida Statutes:

The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

...(7) Non-profit corporations, associations or cooperatives providing service solely to members who own and control such non-profit corporations, associations or cooperatives...

On February 3, 1997, Staff sent an inquiry letter to BSU regarding its billing and provision of service and to the non-members, its policies regarding membership in the corporation, and its articles incorporation. BSU responded on March 12, 1997, and submitted further information on April 18, 1997. (Attachment, pgs. 54-55, 60-63) Staff also sent an inquiry to Southern Pines, which provided documentation on February 28, 1997, April 24, 1997, and May 8, 1997. (Attachment, pgs. 40-53, 58-59)

BSU states that it has been exempted from Commission regulation, and that its operation has not materially changed since the exemption order was issued in 1991. BSU indicated to Staff that land ownership was a prerequisite to membership in the corporation, and that because the homeowners did not own the parcel of land, they were not granted membership. In its March 12, 1997 response to Staff's inquiry regarding the definition of membership, BSU indicated that Article V of its By-Laws states that "[s]ervice is provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation." (Attachment, pg. 62)

Staff first reviewed the documentation from Docket No. 910604-SU, to determine whether the Commission had considered this situation when granting BSU the exemption. The first set of by-laws filed with the Commission in that docket indicated that service was available to non-members if excess capacity was available. In Order No. 24921, the Commission stated that BSU had agreed to amend its by-laws to reflect that it would provide service only to its members. (Attachment, pg. 85) According to the

DOCKET NO. 961343-WS
JUNE 12, 1997

docket file, BSU amended Article V of the by-laws to indicate that requirement. That version of Article V read, in pertinent part:

Section 1: The holders of membership certificates of this corporation are its members. Any person having reasonable access to the sources of and who is in need of water, sewer, or other services operated by the Corporation and who receives the approval of the Board of Directors may be admitted to membership upon subscribing for or otherwise acquiring a membership certificate and by signing such agreements for service as may be provided and required by the Corporation; provided that no person shall be entitled to service who is not a member, and no person otherwise eligible shall be permitted to subscribe for or acquire a membership certificate of the Corporation if the capacity of the Corporation's water and/or sewer system is exhausted by the needs of its existing members. (Emphasis added) (Attachment, pg. 20)

Section 2 of Article V further states that each connection for services "shall entitle the subscriber for such connection to one membership certificate."

Staff requested a copy of BSU's articles of incorporation and by-laws from the Department of State's Division of Corporations. The Department of State informed Staff that while the most current revision of the articles of incorporation must be filed, a corporation is not required to file amended by-laws. After reviewing BSU's response, on April 15, 1997, Staff sent a follow-up letter to BSU, noting that it appeared the BSU was serving non-members, and requesting an updated copy of the articles of incorporation. (Attachment, pg. 64-65)

On May 14, 1997, BSU submitted a copy of its current by-laws. According to the cover page of the by-laws, they were last amended in October of 1995. Article V now states:

The holders of membership certificates of this Corporation are its members. Any person having reasonable access to the sources of and who is in need of water, sewer, or other services operated by the Corporation and who receives the approval of the Board of

Directors may be admitted to membership upon subscribing for or otherwise acquiring a membership certificate and by signing such agreements for service as may be provided and acquired by the Corporation; provided that no person shall be entitled to service who is not a member, and no person otherwise eligible shall be permitted to subscribe for or acquire a membership certificate of the Corporation if the capacity of the Corporation's water and/or sewer system is exhausted by the needs of its existing members. Service is provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation. Persons not holding a direct ownership interest in the property, including, but not limited to, tenants, lessees, sublessees, stockholders, members, parent or subsidiary companies, limited partners, future interests not yet possessory, and others who receive service as a result of the owner's membership status, cannot also be considered members. There shall be no membership fee as such, provided that the Corporation may charge initial connection and other fees upon the issuance or acquisition of each membership certificate. (Emphasis added) (Attachment, pg. 69)

BSU states in its March 12, 1997, letter that the "operation of the Company, as it relates to the exemption, has not changed in any material way since the issuance" of the exemption orders. (Attachment, pg. 63) However, as noted above, the Articles of Incorporation have been amended since the Commission's granting of the exemption. Moreover, a group of customers assert that they receive service from BSU, but are not members of the non-profit corporation. This situation raises the concern that BSU's exempt status may have been impacted by the revision of its articles of incorporation, and the billing, membership and operational policies of the utility.

Commission's authority to review exemptions

Although BSU is exempt from Commission regulation, it is appropriate for the Commission to review the exemption if it appears that the basis for the exemption has changed. Order No. 24921, which granted BSU's exemption, required the utility to notify the Commission within 30 days of any change of circumstance

DOCKET NO. 961343-WS
JUNE 12, 1997

or operation, so that the Commission could review and determine whether the exemption was still appropriate. (Appendix, 85)

Even if the order had not set forth that obligation upon the utility, the Commission has jurisdiction pursuant to Section 367.011, Florida Statutes, to interpret and enforce the provisions of Chapter 367. Section 367.031 was amended in 1996 so that the Commission no longer requires parties to file an application for an exemption. Instead, an entity is considered exempt if it meets the statutory standards. Notwithstanding this revision, if an entity is apparently operating so as to not fit within the exemptions in the statutes, the Commission can and will examine that entity's operations to determine if it should be certified as a utility.

The Commission has conducted such reviews in the past. For example in Docket No. 920923-SU, the Commission instituted an inquiry in to the exempt status of Landmark Utilities, after customers complained that utility charges were not included in the rent, as required to maintain a landlord-tenant exemption under Section 367.022(5), Florida Statutes. After investigation, the Commission determined that the utility no longer qualified for an exemption. Order No. PSC-93-0914-FOR-SU, issued June 16, 1993. In Docket No. 930072-SU, the Commission determined that Pine Lake Mobile Home Estates no longer qualified for a small system exemption under Section 367.022(5) because its capacity and number of customers had increased. Following customer and legislative inquiries, the Commission ordered the utility to file for an original certificate. Order No. PSC-93-1026-FOR-SU.

BSU asserts that its operations have not changed, and that it therefore remains exempt from Commission inquiry and regulation. Moreover, BSU states that it has relied upon the exemption in development matters and long-range planning. It is not Staff's intention to intervene in the operations of an exempt entity, nor disrupt water and wastewater service to the petitioning homeowners. However, the factors noted above indicate that the Commission must reexamine the exempt status of BSU.

Legal Analysis of membership status

Staff recommends that the Commission review the situation with the following consideration in mind: Do BSU's current by-laws indicate that BSU should be certified or is an exempt entity under Section 367.022(7), Florida Statutes?

The linchpin of the non-profit exemption under Section 367.022(7) is the concept that service must be provided solely to members who own and control the corporation. Members have a voice

in the operations of the utility, and the opportunity to vote on utility matters. Each exemption granted by the Commission required an examination of whether non-members receive service.

The Commission has recognized an exemption for systems when the non-members receive service without compensation. The matter was first considered in a petition for declaratory statement filed by Central Lakes Utilities Corporation (Central Lakes) in Docket No. 900516-WU. Central Lakes was a non-profit corporation which provided wastewater service to its members. However, it wished to provide wastewater service to an adjacent non-member business without compensation, but questioned whether doing so would jeopardize its exemption. The Commission examined both the exemption statute and the definition of "utility" under Section 367.021(12), Florida Statutes. While the exemption statute only permitted service to be provided to members, Section 367.021(12) defined a utility for the purpose of regulation as an entity that "offer(s) water and wastewater service to the public for compensation" (Emphasis in original). Therefore, the Commission concluded that, giving effect to each part of the statute, a non-profit corporation could retain its exempt status, provided that if it provided service to non-members, it did so without compensation.

Recognizing the declaratory statement in Central Lakes, the Commission granted an exemption to the Montpelier Village Club, Inc. because although the association provided irrigation water to a non-member, it provided it without compensation. Order No. PSC-95-1436-FOR-WU, issued November 27, 1995, in Docket No. 951154-WU. The Commission reached a similar decision regarding Golf Lakes Residents Association, Inc. in Docket No. 951235-WS, by Order No. PSC-97-0111-FOR-WS, issued January 28, 1997.

The Commission has consistently denied exempt status for non-profit corporations that provide service to non-members for compensation. In Docket No. 900814-WU, the Commission denied an exemption to Zellwood Water Users, which provided service to two non-members: a school and a small water system. The Commission held that "Water Users does not meet the statutory criteria for an exemption because it does not provide service solely to members of the non-profit corporation." Order No. 24044, issued January 29, 1991, at page 2. In Docket No. 941044-WS, the Commission denied an exemption to the Burnt Store RO Association on similar grounds. In addition to the fact that the association provided service to a commercial business that was not a member of the corporation, the Commission noted that the association provided service to tenants renting lots who were not members of the corporation. Order No. PSC-95-0648-FOR-WS, issued May 25, 1995, at page 2.

DOCKET NO. 961343-WS
JUNE 12, 1997

Counsel for the utility submitted a U.S. District Court Opinion which addressed the definition of membership in the context of federal income tax laws: Modern Electric Water Co. v United States, 1988 U.S. Dist. LEXIS 16679; 88-2 U.S. Tax Cas. (CCH) P9523. In that case, the Internal Revenue Service (IRS) contended that because a portion of the electric company's customers were tenants and paid their electric bill directly, less than the necessary 85 percent of the utility's income was derived from its members. The court overruled the IRS determination and instead accepted Modern Electric's definition of a member as "all owners and occupiers of the land." The court's decision was based in part upon the need to serve the spirit of Congressional intent regarding the tax status of non-profit organizations. (Attachment, pg. 56-57)

Staff agrees with the utility that "hypertechnical" applications of the law should not defeat the legislative purpose of exempting non-profit corporations from taxation. However, Staff believes that the case provided by BSU can be distinguished. In the Modern Electric case, the utility asserted that the tenants should be considered members for the purposes of determining the utility's tax exempt status. In BSU's case, the utility is asserting, and the current by-laws require, that the tenants not be considered members.

Given that BSU's by-laws and operating practices indicate that the homeowners and other tenants and lessees are not members, the next relevant question is: who receives service? BSU contends that it is the landowner, and not the tenant or lessee.

BSU explains its position more fully in its June 5, 1997, letter to Staff. (Attachment, pg. 81-82). The utility describes the billing and deposit procedures employed when a homeowner who rents the lot from the subdivision owner receives service. BSU asserts that by directly addressing the tenant's complaints and service problems, and billing the tenants, BSU is providing a service to its member, the subdivision owner. (Attachment, 39, 81)

BSU stated in correspondence to the homeowners that it was industry practice to assign the responsibility and rights to receive utility service to the owner of the property. (Attachment, pg. 38) Staff does not agree with this assertion. It is a common utility industry practice to have the account in the tenant's name, with the tenant being liable for deposits and unpaid bill. While the utility may hold a customer liable for an unpaid bill, the liability commonly attaches to the customer, not the property. A utility cannot hold a subsequent occupant or owner of a property liable for the delinquent bill of the prior occupant or owner. See Williams v. City of Mt. Dora, 452 So.2d 1143 (Fla. 5th DCA, 1984).

Staff also made an inquiry with Talquin Electric Cooperative, which operates in the North Florida area, pursuant to Chapter 425. Talquin grants membership to its customers regardless of whether they own or rent their property.

BSU asserts that the utility "must look to the property owner as the party ultimately responsible for service, and membership in the cooperative" (Attachment, pg. 39). If the customers are truly not receiving service from the utility, but instead receive it through the subdivision owner who owns the land, then a question may be raised as to whether the subdivision is operating as a utility under Chapter 367. Although the subdivision owner is considered to be a member having one share in the non-profit corporation, it is important to note that the subdivision does not appear to receive service at a master meter. Instead, the lots are individually metered for service directly from BSU. There is no indication that the subdivision owner performs any utility service to the lot-owners, or resells the service to the lessees. The fact that the utility, and not the subdivision owner, bills the customers and answers billing and service complaints indicates to Staff that the homeowners receive service directly from BSU, and not through the subdivision/member of the cooperative.

In its June 5, 1997, correspondence, the utility notes that the Commission has no rules on the subject of exemptions. The Commission recently repealed Rule 25-30.060, Florida Administrative Code, as a result of the amendment of Section 367.022 to no longer require utilities to seek exemptions from the Commission. However, the Commission may still require an entity to file an application for certification when it provides service inconsistent with the exemption criteria. Staff believes that the orders cited above, and the language of the statute itself is controlling in this situation: "non-profit corporations...providing service solely to members who own and control..." If BSU provides service to non-members, then it does not meet the statutory criteria and is no longer exempt.

Staff again turns the question posed at the beginning of this discussion: would the Commission recognize an exemption for BSU given its current practices, and the most recent revision of the by-laws? Article V of the by-laws indicates that a lessees and tenants may receive service as a result of the owner's status, but are not members. On its face, BSU's by-laws indicate that the homeowners receive service without membership status. BSU's March 12, 1997, letter makes the distinction between customers as members and non-members. (Attachment, pg. 63) Staff therefore recommends that the Commission conclude that the utility's by-laws and operating practices indicate that it has provided service to non-

DOCKET NO. 961343-WS
JUNE 12, 1997

members, and therefore does not qualify as an exempt utility under Section 367.021(7).

Recommended action on BSU's exempt status

As a result of Staff's recommendation, BSU should be given 60 days to either revise its by-laws, or apply for an original certificate with the Commission. Staff believes this recommended course of action recognizes the need, as cited in Modern Electric, to recognize legislative intent. While Staff recommends that the by-laws, as currently adopted, indicate that BSU provides service to non-members, Staff also recognizes the Florida Legislature's intent, through Section 367.022(7), to exempt non-profit corporations from the Commission's regulation. Staff believes that the Commission's goal is to give the utility the opportunity to rectify the situation, and create a situation where all the customers who receive service are members of the non-profit corporation. As stated above, Staff does not wish to interfere with the delivery of service to the public, or with the operations of BSU, provided the utility can amend its by-laws and policies to conform with Section 367.022(7).

As noted earlier, Order No. 24921 required BSU to notify the Commission of any change of circumstance or operating method so that its exempt status could be reviewed. Staff does not recommend that the Commission show cause the utility for this failure to notify the Commission. Instead, Staff would recommend that the Commission consider show causing BSU if it fails to comply with the Commission's order to amend its by-laws or file for certification. While the failure to notify the Commission could be interpreted as a violation of the Commission's order, Staff believes that if the utility amends its by-laws to retain its exempt status, a show cause proceeding is not necessary at this time.

Request to Audit BSU and Order Redistribution of Capital Credits

The homeowners also requested in their petition that the Commission review BSU's operations, audit its books, and "reassign the already distributed capital credits to every customer on a fair and equitable basis." In support of that request, the homeowners supplied documentation related to BSU's financial structure, its distribution of credits, and its rate proceeding before the Lee County Commission.

As stated above, the Commission's legal authority in this matter extends to the review of BSU exemption, and the determination as to whether BSU remains an exempt entity. If BSU amends its by-laws to retain its exempt status, Staff recommends

DOCKET NO. 961343-WS
JUNE 12, 1997

that the Commission lacks authority to audit BSU's books for the purpose of reassigning capital credits. However, if BSU files for an original certificate, then the Commission could review the utility's books and records at that time.

DOCKET NO. 961343-WS
JUNE 12, 1997

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, the docket should not be closed. (O'SULLIVAN PARKER)

STAFF ANALYSIS: If the Commission approves Staff's recommendation in Issue 1, the docket should remain open in order to allow further action on BSU's exempt status. If the Commission denies Staff's recommendation but requires still additional action, the docket should remain open.

ATTACHMENT

Docket No. 961343-WS

	<u>Page*</u>
Petition of Southern Pines Homeowners Association with attachments	1-39
Letter: Staff to Mr. Arend (2/3/97)	40-41
Letter: Mr. Arend to Staff w/attachments A, E, F (2/28/97)	42-53
Letter: BSU counsel to Staff w/case attached (4/18/97)	54-57
Letter: Mr. Arend to Staff w/o attachments (4/24/97)	58-59
Letter: Staff to BSU counsel (2/3/97)	60-61
Letter: BSU counsel to Staff (3/12/97)	62-63
Letter: Staff to BSU counsel (4/15/97)	64-65
Letter: BSU counsel to Staff w/current by-laws (5/14/97)	66-80
Letter: BSU counsel to Staff (6/5/97)	81-82
Order No. 24921, approving BSU's exemption (8/16/91)	83-86

*Pages are numbered in the upper right-hand corner.

PETITION TO THE
FLORIDA PUBLIC SERVICE COMMISSION

BY THE

SOUTHERN PINES HOMEOWNERS

OF BONITA SPRINGS, INC.

REQUESTING THE RESCINDING OF
THE EXEMPTION GRANTED IN PLACE OF
CERTIFICATE # WS-126 WHICH WAS ISSUED TO

BONITA SPRINGS WATER SYSTEM, INC.,

(NOW KNOWN AS BONITA SPRINGS UTILITIES, INC.).

THIS EXEMPTION FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION WAS BASED ON THE ASSUMPTION THAT BONITA SPRINGS UTILITIES, INC. WAS A NON-PROFIT COOPERATIVE **PROVIDING SERVICE SOLELY TO MEMBERS WHO OWN AND CONTROL SUCH COOPERATIVES**. THIS IS NOT THE CASE WITH BONITA SPRINGS UTILITIES, INC. BONITA SPRINGS UTILITIES PROVIDES WATER AND WASTE WATER SERVICE TO MANY INDIVIDUALLY METERED AND BILLED CUSTOMERS WHO ARE DENIED MEMBERSHIP IN THE CORPORATION.

THE BOARD OF DIRECTORS AND THE GENERAL MANAGER OF BONITA SPRINGS UTILITIES, INC. ARE WILLFULLY AND KNOWINGLY NOT ABIDING BY THE CORPORATION "ARTICLES OF INCORPORATION" AND "CORPORATION BY-LAWS". ALL THEIR CORPORATION DOCUMENTS SPECIFY VERY CLEARLY, THAT YOU MUST BECOME A CORPORATION MEMBER **FIRST**; THEN AS A MEMBER YOU ARE ENTITLED TO THEIR SERVICES.

BONITA SPRINGS UTILITIES, INC. COLLECTS WATER AND SEWER REVENUES IN EXCESS OF THE CORPORATIONS EXPENSES AND AS A NOT-FOR PROFIT CORPORATION THESE EXCESS REVENUES MUST BE DISTRIBUTED IN SOME WAY TO MAINTAIN THEIR NON-PROFIT STANDING WITH THE STATE OF FLORIDA. THEY DISPENSE THESE EXCESS FUNDS IN THE FORM OF CAPITAL CREDITS TO THE CORPORATION MEMBERS.

THE SOUTHERN PINES HOMEOWNERS OF BONITA SPRINGS, INC. REPRESENTS FOUR HUNDRED (400) RESIDENCES IN OUR COMMUNITY WHICH DO NOT RECEIVE ANY SHARE OF THESE CAPITAL CREDITS AND ARE DENIED OUR VOTING PRIVILEGES AS WELL.

DOCUMENT PREPARED DATE
11970 NOV 12
FFSC-RECORDS/REPORTING

(2)

BACKGROUND INFORMATION IN SUPPORT OF THIS PETITION
BONITA SPRINGS UTILITIES, INC. SHOULD BE REGULATED BY THE FLORIDA
PUBLIC SERVICE COMMISSION JUST LIKE ANY OTHER UTILITY.

1- Bonita Springs Utilities, Inc. is not a cooperative. Their Board of Directors decide what class of customer they will allow to become members of the Corporation. This should be determined by the Corporations Articles of Incorporation and the Corporation By-Laws which state that you become a member of the Corporation first. As a member you are entitled to their services, if those services are available at your location. **Only members are entitled to those services.** When you become a member, you are issued a Membership Certificate which states, "This is to certify that John Doe - Service address 10005 Main St. is a member of the **BONITA SPRINGS UTILITIES, INC.**, and is entitled to it's services at the foregoing address subject to the provisions of the Charter, By-Laws and Rules and Regulations of the Corporation". Later on in the Certificate it states, "Every member upon becoming a member of this Corporation agrees to sign such agreement for the purchase of and/or sewer service from the Corporation ----" The language of all BSU's legal documents are worded to give the appearance of being a cooperative which has allowed BSU to apply for and receive the Exemption from Regulation by the Florida Public Service Commission.

2- The Lee County Commissioners have some type of minimal oversight responsibility in the operation of BSU. The Lee County Commissioners have made no effort to require BSU to abide by their Corporation "Articles of Incorporation" or to abide by their "Corporation By-Laws". As citizens of Lee County, we appeared before that Commission and the Lee County Commissioners approved the BSU Proposed Rate Restructure when no real financial data was presented, other than the general statement that BSU had an outside consulting firm (Hartman & Associates) review their existing rates and make recommendations to provide a fairer charge to customers based on a reasonable relationship of service provided to a cost of providing the service. A 16,000 gallon billing cap was proposed for residential wastewater service to prevent the potential of customers paying a wastewater charge for irrigation. Members of our Community attended both the Public Meeting and the Lee County Commissioners Meeting. BSU's Rate Restructuring was to net BSU approximately \$50,000 in additional revenue. **The main argument used to justify the Rate Restructuring, was how closely BSU rates would compare with the rates of other Utilities of a similar nature.** Some users rates went up and some went down. We were never shown any real data to substantiate the Restructuring. **The Lee County Commissioners never addressed our denial of membership complaints.**

3- The denial of our rights to BSU Corporation Membership has been beyond belief. First, let me state that no one I know is interested in any position or office in BSU. We became interested when we became aware that our water and sewer service was a cooperative and we requested BSU to grant us our membership because we did not own the ground our homes are situated on. We were ineligible for membership because we were not offered any written documentation. Our Community is 100% resident owned, except for a few owners who rent their homes. Approximately 50% of us are year-round residents. We all have individual water meters, we all pay BSU direct. Some of us contacted BSU direct, in order to transfer billing from the developer to the home owner. Some transfers were done by the developer's sales force as a

service to out of town buyers. We all have individual water and sewer accounts with BSU. BSU grants only one Membership to the developer, Tesone Development Corporation

3

We have read BSU's "Articles of Incorporation" and BSU's "By-Laws". We have examined their "Water Agreements" (there are two of them- one for Members and an after-thought one to cover situations where the BSU Board of Directors do not want to grant Membership in the Corporation); all of these documents clearly state only members are entitled to their water and sewer services. At the Public meeting in Bonita Springs on August 15, 1995, we asked Ben Nelson, President of the Board of Directors of BSU to abide by their Corporation Documents and give us our Membership. His reply was "Our Lawyers say we are abiding by our documents". When he was asked what he thought the documents said, he didn't answer. Before the County Commissioners, when the same issue was raised and a Commissioner asked about BSU denying us Membership, the Attorney for BSU said, "I can't answer because BSU might be in litigation". BSU is not a Cooperative. BSU is a Monopoly Utility that is not following the laws of the State of Florida.

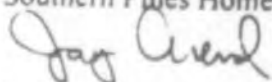
We are petitioning the Florida Public Service Commission to rescind that Exemption from regulation granted to BSU. We are further Petitioning the Florida Public Service Commission to review BSU's entire operation, audit their books and financial records, rate structure, and reassign the already distributed Capital Credits to every customer on a fair and equitable basis. BSU has been charging rates in excess of their yearly operating costs. These excess charges have been collected from BSU's Members and Non-Members who have been denied Membership. Non-Members are not issued the Capital Credits. The net effect of this is to over-charge the Non-Member and to reward the Members with the Non-Member's shares of these excess funds.

Enclosed are copies of BSU's "Articles of Incorporation", "By-Laws", "Water Agreements", "Certificate of Membership", and copies of other pertinent documents.

Please examine these carefully. Please rescind the Exemption from regulation that BSU is using to discriminate against many of it's customers by denying them Corporation Membership, Corporation Voting Rights and a share in the excess collections that is now being divided among Members, and unfairly denied to Customers who are Non-Members.

Thank you and Respectfully Submitted, in the name of and for the Residents of Southern Pines by the Southern Pines Homeowners of Bonita Springs, Inc.

Jay Arend, President,
Southern Pines Homeowners of Bonita Springs, Inc.



Jay Arend
26381 Charlotte Drive
Bonita Springs, Florida 34135
Tel. 941-947-6099

Bonita Springs Utilities, Inc.

PRESIDENT'S PERSPECTIVE



By Ben Nelson, Jr.
President

Our community is growing fast, perhaps too fast for some, and organizations responsible for overseeing delivery of services are changing right along with the community. Bonita Springs Utilities is one of the groups at the forefront of seeing that residents continue to receive the services they need, despite local growing pains. RSU's role is to supply a constant, safe adequate supply of water, to treat wastewater, and to protect the environment that we've all moved here to enjoy.

As one of nine board members elected by BSU customers, I'd like to share a bit of perspective on how this board operates on your behalf. Every policy, every decision is made with your needs in mind. Board members represent a diverse cross-section of customer concerns. We hail from business, the professions, family life and the retired community. We volunteer our time because we find satisfaction in serving the public interest. Because we are members of this utility and this community, we share your concerns.

Political issues are not our focus. We supply water service, pure and simple. To do that we must ensure the survival of this utility as a public servant and a not-for-profit entity. Bonita Springs is fortunate to have a utility that keeps pace with the needs of its members. Our "cooperative" approach is highly effective. ☐

All labeling and sorting completed by members of LAIRC, Inc.

WATER CONSERVATION

-  Fix leaky faucets as soon as possible. Dripping faucets have the capability of wasting 10 gallons of water per day. In fact, a single dripping faucet can waste a lot more water in a single day than one person requires for drinking in an entire week!
-  Save rain and shower water in buckets for later use on plants.
-  Instead of running the water to rinse your vegetables, stopper the sink. Also, when washing dishes by hand, you should also stopper the sink; and when you're done, turn on the garbage disposal as you pull the plug.
-  Remember to use only the amount of water you truly need, and encourage everyone else in your family to keep on looking for new ways to conserve it, in and around your home. Water is a limited commodity we cannot afford to waste. ☐



BOARD OF DIRECTORS

Bonita Springs Utilities, Inc.

Ben Nelson, Jr., President

Hank Hochstetler, VP	Frank Liles, Jr., Treas.
John Mathes, Sec.	T. Harvey Haines
Virginia Sumner	Marc Ciaffone
Bob McGrath	Kathy Schwichtenberg

General Manager - Fred Partin
992-0711

11860 East Terry Street
P O Box 2368, Bonita Springs, Florida 34133-2368

BONITA SPRINGS UTILITIES, INC.

P O BOX 2368

BONITA SPRINGS, FL 34133-2368

BULK RATE
U.S. POSTAGE
PAID
BONITA SPRINGS, FL
PERMIT NO. 29

SOUTHERN PINES HOMEOWNER'S of BONITA SPRINGS, INC.

OFFICERS AND BOARD of DIRECTORS 1996

Northern Address

President- Jay Arend
26381 Charlotte Drive
Bonita Springs, Fl 34135

TEL-715-344-8735
1514 Okray Avenue
Plover, WI 54467

Vice-President- Bernard Smith
11781 South Carolina Drive
Bonita Springs, Fl 34135

c/o Simpson TEL-207-439-4817
72 Foyes Lane
Kittery Point, Me 03905

Treasurer- James Matthews
11340 Virginia Drive
Bonita Springs, Fl 34135

Year-Round Resident

Secretary- Anna Tandy
26369 Charlotte Drive
Bonita Springs, Fl 34135

Year-Round Resident

Assist. Sec/Treas.- Owen Northacker
11289 North Carolina Drive
Bonita Springs, Fl 34135

Year-Round Resident

Director- Carl Gallo
26356 New Orleans Drive
Bonita Springs, Fl 34135

Year-Round Resident

Director- Jean Byrnes
11757 South Carolina Drive
Bonita Springs, Fl 34135

Director- Thomas Straub
26296 Charlotte Drive
Bonita Springs, Fl 34135

TEL-412-885-2185
204 Saxonwald Lane
Pittsburgh, Pa 15234

BONITA SPRINGS UTILITIES, INC.
BALANCE SHEETS
DECEMBER 31, 1995 AND 1994

(6)

	1995 ----	1994 ----
ASSETS -----		
Utility Plant		
Utility Plant, Property and Equipment at Cost Net of Accum Depreciation	\$42,965,904	\$40,018,409
Trustee Funds Under Bond Indenture Agreements	-----	-----
Cash and Cash Equivalents	4,028,290	4,307,359
U.S. Treasury Notes At Cost	960,000	995,959
Global Capital Guaranteed Investment Contract at Cost	1,944,928	1,944,928
Accrued Interest Receivable	15,224	12,835
Total Trustee Funds	6,948,442	7,261,081
Current Assets	-----	-----
Cash and Cash Equivalents	10,080,602	7,465,418
Accounts Receivable	433,810	383,438
Materials and Supplies Inventory	130,253	123,235
Prepaid Insurance	59,375	52,132
Prepaid Expenses	6,180	3,334
Total Current Assets	10,710,220	8,027,557
Other Assets	-----	-----
Bond Issuance Costs Deferred, Water	319,410	334,842
Consumptive Permit Costs	45,000	45,000
Utility Deposits	16,650	16,325
Bond Issuance Costs Deferred, Wastewater	2,446,429	2,520,440
Bond Insurance Deferred	638,277	664,070
Total Other Assets	3,465,766	3,580,677
TOTAL ASSETS	\$64,090,332	\$58,887,724
	=====	=====

Notes to financial statements form an integral
part of these statements.

(7)

BONITA SPRINGS UTILITIES, INC.
BALANCE SHEETS
DECEMBER 31, 1995 AND 1994

	1995 ----	1994 ----
<u>MEMBERS' EQUITY AND LIABILITIES</u>		
Members' Equity	\$ 4,205,271	\$ 4,205,271
Members' Investment Certificates	110,000	110,000
Other Contributed Capital	28,248,974	22,809,893
Retained Earnings	32,564,245	27,125,164
Total Members' Equity	29,375,000	29,900,000
Long-Term Debt, Less Current Portion Included Below	534,378	547,732
Payments Due From Trustee Funds	525,000	545,000
Accrued Bond Interest	1,059,378	1,092,732
Current Portion Long-Term Debt	641,557	400,416
Total Payments Due-Trustee Funds	359,875	278,598
Current Liabilities	90,277	57,616
Accounts Payable, Trade	1,091,709	736,630
Customer Deposits	-0-	33,198
Other Current Liabilities	31,526,087	31,762,560
Total Current Liabilities	\$64,090,332	\$58,887,724
Deferred Capacity Reservation Fees		
Total Liabilities		
TOTAL MEMBERS' EQUITY AND LIABILITIES		

Notes to financial statements form an integral
part of these statements.

8

BONITA SPRINGS UTILITIES, INC.
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Background

The Bonita Springs Utilities, Inc. ("The Company") is a not for profit cooperative corporation, incorporated in Florida in 1970, operating as a public utility which provides potable water and sewage treatment to its residential and commercial users in Southwest Lee County, Florida. The Company has a franchise granted in 1970 by the Board of County Commissioners of Lee County, Florida. The Board authorizes it to provide utility services in its franchise area comprising approximately 50 square miles.

On November 21, 1990, the Company entered into a revised contract with Lee County, Florida, which revises the original franchise agreement dated February 11, 1970. The new franchise agreement is for 30 years commencing November 21, 1990 and restates the exclusive rights of the Company to provide water and sewer services to the franchise area. A new stipulation of the agreement is that the Company must commence construction of a sanitary sewer system within 24 months from agreement date and substantially complete construction within 48 months of the agreement date. The Board shall have the option at any time after this grant to purchase the Company's sanitary sewerage and water system.

The Company is a cooperative owned by its members and is administered by a Board of Directors consisting of nine members who are elected by the users of the system. The Company's operations are regulated by the Board of County Commissioners of Lee County, Florida, which also regulates the rates charged by the Company. The Company presently provides water services to about 16,359 customers in its franchise area, and 9,791 customers receive sewer services.

Accounting Policies

The Company's accounting records are maintained on the accrual basis of accounting recognizing income when earned and expenses when incurred and the accounting records are fully computerized.

Utility Plant

All utility property, plant and equipment assets are valued at historical costs if purchased and at estimated fair market value if donated. Depreciation is provided for on a straight-line and declining balance basis over the estimated useful lives of the depreciable assets.

Accounts Receivable

Accounts receivable are generally current balances in as much as the Company's present policy is to terminate service if a customer account is not paid within 40 days of the billing date. There is no allowance for doubtful accounts at December 31, 1995 and 1994.

(9)

BONITA SPRINGS UTILITIES, INC.
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

NOTE G - ALLOCATION OF CAPITAL CREDITS TO MEMBERS

A condition of the tax-exemption status granted to the Company requires that the net revenues of the Company be allocated to each member who must be informed in writing of the amount recorded to their credit. For the year 1987, the total capital accumulated since the inception of the system in 1970 amounted to \$4,696,323 as of December 31, 1987, was required to be credited, on an equal basis, to each member. Accordingly, each member in November 1988, was mailed a notice showing their share of the Company's accumulated capital as stated above.

For 1988 and future years, the annual net revenues of the Company will be allocated to each member based on their patronage for water and sewer services during that year and accumulated annually for each member. Credits are available to the members only upon dissolution or liquidation of the Company and may not be applied to water payments or any amounts owed the Company by the member. Members were informed of the amount credited to their capital accounts for the year 1994.

NOTE H - RELATED PARTY TRANSACTIONS

The Company purchased goods and services from businesses owned and operated by several members of the Company's Board of Directors. These purchases were not material in amount during the year.

NOTE I - PENSION PLAN

The Company established a contributory pension plan effective January 1, 1987, covering all eligible employees after one year of continuous service with credit for service provided from the date of employment. The plan, called a "Money Purchase Plan" is a defined contribution type and was approved by the Internal Revenue Service in December, 1987. The plan is funded through an annuity contract with the Principal Mutual Life Insurance Company. Company contributions range from 6% to 10% of the employees monthly wages based upon length of service. The employee is required to contribute 3% of his monthly wage but may contribute up to 7% more. Contributions by the Company to the plan for 1995 amounted to \$87,148. The pension program expenses were \$2,704 for the year.

NOTE J - SUBSEQUENT EVENTS

The trustee, on January 1, 1996, paid \$269,071 in interest and \$ 175,000 scheduled principal payments on the 1987 tax exempt bond issue for the six months ended January 1, 1996. These payments were made from reserves established for these purposes, and were accrued in the 1995 financial statements.

BONITA SPRINGS UTILITIES, INC.
WATER DEPARTMENT
SUPPLEMENTAL BALANCE SHEET
DECEMBER 31, 1995

10

MEMBERS' EQUITY AND LIABILITIES

Members' Equity	\$ 4,205,271	
Members' Investment Certificates	110,000	
Other Contributed Capital	17,848,978	\$22,164,249
Retained Earnings		
TOTAL MEMBERS' EQUITY		7,520,000
Long-Term Debt, Less Current Portion Included Below		
Payments Due From Trustee Funds	269,070	
Accrued Bond Interest	175,000	
Current Portion Long-Term Debt		444,070
Total Payments Due-Trustee Funds		
Current Liabilities		
Accounts Payable, Trade	105,847	
Customer Deposits	195,297	
Other Current Liabilities	51,627	
Intra-Company Transfers Payable	332,360	
Total Current Liabilities		685,131
TOTAL LIABILITIES		8,649,201
TOTAL MEMBERS' EQUITY AND LIABILITIES		\$30,813,450

See Independent Auditor's Report on
Additional Information.

BONITA SPRINGS UTILITIES, INC.
SEWER DEPARTMENT
SUPPLEMENTAL BALANCE SHEET
DECEMBER 31, 1995

(11)

MEMBERS' EQUITY AND LIABILITIES

Members' Equity		
Retained Earnings		\$10,399,996
Long-Term Debt, Less Current Portion Included Below		21,855,000
Payments Due From Trustee Funds	265,308	
Accrued Bond Interest	350,000	
Current Portion Long-Term Debt	-----	615,308
Total Payments Due-Trustee Funds		
Current Liabilities	535,710	
Accounts Payable, Trade	164,578	
Customer Deposits	38,650	
Other Current Liabilities	-----	738,938
Total Current Liabilities		23,209,246
TOTAL LIABILITIES		-----
TOTAL MEMBERS' EQUITY AND LIABILITIES		\$33,609,242
		=====

See Independent Auditor's Report on
Additional Information.

LEE COUNTY, FLORIDA

Amendment: December 16, 1991

ARTICLE I - AMENDED

The name of this corporation shall be BONITA SPRINGS UTILITIES, INC. (which must contain the word "Incorporated" or "Inc."), and shall be a non-profit corporation organized under Chapter 617, Florida Statutes, and shall have all powers given to a non-profit corporation by the provisions of said Chapter 617, Florida Statutes.

December 16, 1991

ARTICLE II

The nature of the business of the corporation and the objects and purposes for which it is organized are:

A. To construct, maintain, and operate a water system for the supplying of water for domestic, commercial, agricultural, industrial, and other purposes to its members and for the sale of any surplus water remaining after the needs of its members have been satisfied and to engage in any activity related thereto, including but not limited to the acquisition of water by appropriation, drilling, pumping, and/or purchase, and the purchase, laying, institution, operation, maintenance, and repair of wells, pumping equipment, water mains, pipelines, valves, meters, and all other equipment necessary to the construction, maintenance and operation of a water system and

B. To construct, maintain, and operate a sewage disposal system for the use and benefit of its members.

ARTICLE III

The members of the corporation shall be the subscribers hereto and all other persons, partnerships, corporations, or other legal entities having a reasonable accessibility to the sources of and who desire to have water and other services supplied for domestic, commercial, agricultural, industrial, or other uses from the systems constructed, maintained, and operated by the corporation. The corporation shall not be required to admit additional members if the capacity of its water system is exhausted by the needs of its existing members and such other persons to whom it has been supplying water.

ARTICLE IV

This corporation shall have perpetual existence.

ARTICLE V

The names and residences of the subscribers to these Articles of Incorporation are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
BYRON G. LILES	US 41 Bonita Springs, FL
T. HARVEY HAINES	Bonita Beach Rd. Bonita Springs FL
DAVID A. EDGE	PO Box 851 Bonita Springs, FL
ARNOLD L. GLAZIER	Bonita Beach Rd. Bonita Springs, FL
PAUL A. SCHMIDT	PO Box 126 Bonita Springs, FL

ARTICLE VI - AMENDED

The Board of Directors of this corporation shall consist of nine (9) members, a majority of whom must at all times be farmers or rural residents. The directors named in the Articles of Incorporation shall serve until the first annual meeting of the members and until their successors are elected and have qualified. Three (3) directors shall be elected for a term of one (1) year; three (3) directors for a term of two (2) years; and three (3) directors for a term of three (3) years. At each annual meeting thereafter, the members shall elect for a term of three (3) years the number of directors whose terms of office have expired.

February 17, 1972

ARTICLE VII

15

The officers who shall serve until the first election or until their successors are elected shall be as follows:

<u>NAME</u>	<u>OFFICE</u>
PAUL SCHMIDT	President
T. HARVEY HAINES	Vice-President
DAVID A. EDGE	Secretary/Treasurer

The term of office of the foregoing officers shall be for a period of one year or until their successors are elected. The officers shall be elected by the Board of Directors.

ARTICLE VIII

The first Board of Directors shall consist of five (5) members who shall serve until the first election or until their successors are elected. The names and addresses of the members of the first Board of Directors are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
BYRON G. LILES	US 41 Bonita Springs, FL
T. HARVEY HAINES	Bonita Beach Rd. Bonita Springs, FL
DAVID A. EDGE	PO Box 851 Bonita Springs, FL
ARNOLD L. GLAZIER	Bonita Beach Rd. Bonita Springs, FL
PAUL A. SCHMIDT	PO Box 126 Bonita Springs, FL

ARTICLE IX

16

The By-Laws of the corporation shall be made and may be altered or rescinded by a vote of a majority of the membership.

ARTICLE X

Amendments to these Articles of Incorporation may be proposed to the Board of Directors by a majority vote of the members of the corporation. A majority of the members of the Board of Directors may approve, amend, or reject such proposals and shall have final authority to adopt any amendment.

ARTICLE XI - AMENDED

The assets and income of this non-profit corporation shall be utilized to promote its purposes. No salaries or fees shall be paid to the directors or officers of this corporation unless they are also employees, but nothing herein shall prevent the hiring of employees or engaging of others to perform services for this corporation or to prevent the reimbursement of any person who makes outlays for the reasonable expenses of the corporation. In the event of dissolution or liquidation, either voluntarily or pursuant to order of a court of competent jurisdiction, and after the payment of all outstanding liabilities, each member shall be repaid capital credits without priority on a pro rata basis to the extent assets are available to make such payments. To the extent that assets remain following payment of all outstanding liabilities and capital credits, distribution shall be made without priority to the members and former members in the proportion which the patronage of each member or former member from and after January 1, 1988, bears to the total patronage of all members from and after such date, to the date of such dissolution. A plan of distribution of excess capital prior to dissolution shall be set forth in the corporation's By-Laws.

December 29, 1987

IN WITNESS WHEREOF, we have made and subscribed these Articles of Incorporation, this 26th day of December, 1969.

Byron G. Liles

T. Harvey Haines

David A. Edge

Arnold L. Glazier

Paul A. Schmidt

STATE OF FLORIDA)
COUNTY OF LEE)

17

Be it remembered, that on this 26th day of December, 1969, personally appeared before me, a Notary Public in and for the State of Florida, BYRON G. LILES, T. HARVEY HAINES, DAVID A. EDGE, ARNOLD L. GLAZIER, and PAUL A. SCHMIDT, known to me personally to be the individuals who executed the foregoing Articles of Incorporation as the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal the day and year aforesaid.

NOTARY PUBLIC

My commission expires:

ARTICLE XII

The corporation intends to be an organization described in Section 501(c)(12) of the Internal Revenue Code of 1986, Title 26, to the United States Code.

December 29, 1987

BY-LAWS

OF

BONITA SPRINGS UTILITIES, INC.

AMENDED 12/29/87
AMENDED 7/10/90
AMENDED 7/23/91
AMENDED 12/16/91

(19)

ARTICLE I

GENERAL PURPOSES

The purposes for which this Corporation is formed, and the powers which it may exercise are set forth in the Charter of the Corporation.

ARTICLE II

NAME AND LOCATION

SECTION 1: The name of this Corporation is BONITA SPRINGS UTILITIES, INC.

SECTION 2: The principal office of this Corporation shall be located in Bonita Springs, Florida, but the Corporation may maintain offices and places of business at such other places within the State as the Board of Directors may determine.

ARTICLE III

SEAL

SECTION 1: The seal of the Corporation shall have inscribed thereon the name of the Corporation and the year of its organization, and shall contain the words, "Corporation Not For Profit".

SECTION 2: The Secretary of the Corporation shall have custody of the seal.

SECTION 3: The seal may be used by causing it or a facsimile thereof to be impressed or reproduced or otherwise affixed to a document.

ARTICLE IV

FISCAL YEAR

The fiscal year of the Corporation shall begin the first day of January in each year.

ARTICLE V
MEMBERSHIP

SECTION 1: The holders of membership certificates of this Corporation are its members. Any person having reasonable access to the sources of and who is in need of water, sewer, or other services operated by the Corporation and who receives the approval of the Board of Directors may be admitted to membership upon subscribing for or otherwise acquiring a membership certificate and by signing such agreements for service as may be provided and required by the Corporation; provided that no person shall be entitled to service who is not a member, and no person otherwise eligible shall be permitted to subscribe for or acquire a membership certificate of the Corporation if the capacity of the Corporation's water and/or sewer system is exhausted by the needs of its existing members. There shall be no membership fee as such, provided that the Corporation may charge initial connection and other fees upon the issuance or acquisition of each membership certificate.

SECTION 2: Each connection for the services rendered by the Corporation shall entitle the subscriber for such connection to one membership certificate, subject to Section 1 of this Article.

SECTION 3: At any meeting of the members of the Corporation, each member shall be entitled to only one vote upon each matter submitted to a vote, regardless of the number of certificates of membership held, provided the member is in good standing for all certificates held.

SECTION 4: In case of the death of a member, or if a member ceases to be eligible for membership, or a member willfully fails to comply with the By-Laws, or Rules and Regulations of the Corporation, the Board of Directors may terminate his membership by resolution of the Board. A transfer by a member of all membership certificates held by such member shall terminate such member's membership. Any member whose membership is terminated for cause, other than ceasing to be eligible, may appeal the action of the Board of Directors to the members at their next regular or special meeting. Thereafter such member shall be reinstated by the issuance of a new membership certificate only upon such conditions as the Board of Directors may deem necessary or appropriate. Termination of such membership shall result in a disconnection of water and sewer service to the member. Termination shall not result in forfeiture of a member's entitlement to any patronage refund resulting from status as a member pursuant to Article XII of these By-Laws. However, any such refund shall have deducted from it any debt or obligation owed the Corporation by the member.

(2)

ARTICLE VI

MEMBERSHIP CERTIFICATES

SECTION 1: This Corporation shall not have capital stock, but membership shall be represented by membership certificates.

SECTION 2: The membership certificates shall be issued to each member for all service connections to such member and shall be numbered consecutively, in accordance with the order of issue. Each membership certificate shall bear the following statements:

Membership Certificate No. _____

In

Bonita Springs Utilities, Inc.

A not-for-profit corporation incorporated
under the laws of the State of Florida

This is to certify that _____
Address: _____ is a member of the BONITA
SPRINGS UTILITIES, INC., and is entitled to its services at the foregoing address subject to
the provisions of the Charter, By-Laws, and Rules and Regulations of the Corporation.

This membership certificate is issued and accepted in accordance with and subject to the conditions and restrictions stipulated in the Charter, By-Laws, of the Corporation, and amendments to the same heretofore or hereafter made.

Transfers of membership certificates shall be made only upon the books of the Corporation, only to persons eligible to become members, only with the approval of the Board of Directors and only when the member transferring is free from indebtedness to the Corporation, all as more fully set forth in the Charter and By-laws of the Corporation.

No member of this Corporation shall be entitled to more than one vote at meetings of the members, regardless of the type of service or number of membership certificates held. Every member upon becoming a member of this Corporation agrees to sign such agreement for the purchase of water and/or sewer from the Corporation.

Witness the seal of the Corporation and the signature of its duly authorized officers
affixed this ____ day of _____, 19____.

Secretary

President

SECTION 3: All transfers of membership certificates shall be made upon the books of the Corporation upon surrender of the certificates covering the same by the holders thereof or by their legal representatives but only with the approval of the Board of Directors and only to persons eligible to become members and only when the transferring member is free from indebtedness to the Corporation. (22)

SECTION 4: Each member agrees to sign such Water Users and/or Wastewater Service Agreements as the Corporation shall from time to time provide and require.

SECTION 5: Certificates not surrendered by members upon termination of membership in the Corporation shall be declared void by the Board of Directors, and upon adoption of such a resolution by the Board, the Secretary shall so note on the books of the Corporation, and thereafter such membership certificate shall be void. Lost certificates may be reissued upon direction and upon such conditions as the Board of Directors may determine.

ARTICLE VII

MEETINGS OF MEMBERS

SECTION 1: The annual meeting of the members of this Corporation shall be held at Bonita Springs Community Center at Bonita Springs, Florida on Tuesday, third week of February of each year, if not a legal holiday, or if a legal holiday, on the next business day following. The place and time of the annual meeting may be changed by the Board of Directors giving notice thereof to each member not less than ten days in advance thereof.

SECTION 2: Special meetings of the members may be called at any time by the action of the Board of Directors and such meeting must be called by the President whenever a petition requesting such meeting is signed by at least ten percent of the members and presented to the President or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except such as is specified in the notice.

SECTION 3: Notice of any special meeting of members of the Corporation may be given by a notice mailed to each member of record, directed to the address shown upon the books of the Corporation, not less than ten nor more than fifty days prior to the meeting. Such a notice shall state the day and hour, place and purpose of the special meeting. No notice of the annual meeting shall be required.

SECTION 4: Each member shall have only one vote upon each matter submitted to a vote at a meeting of the members and the vote of each member shall be equal to that of every other member. Voting by proxy shall be permitted, but it is required that not less than twenty members of the Corporation must be present in person at any meeting to constitute a quorum of the transaction of any business.

SECTION 5: Directors of this Corporation shall be elected at the annual meeting of the members. No cumulative voting shall be allowed.

SECTION 6: The order of business at the regular meetings and, so far as possible at all other meetings, shall be:

1. Calling to order and report of Secretary as to number.
2. Proof of notice of meeting, if required.
3. Reading and action on any unapproved minutes.
4. Reports of officers and committees.
5. Election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE VIII

Directors and Officers

SECTION 1: The business and affairs of the Corporation shall be managed by the Board of Directors. The Board of Directors of this Corporation shall consist of nine members. At each annual meeting the members of the Corporation shall elect for a term of three years the number of directors whose terms of office have expired. No person shall be eligible to become or remain a Director of the Corporation who:

(a) is not a member of and resident in the area served by the Corporation;

(b) is a relative of a Director. "Relative" here shall mean an individual who is related to another Director as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Directors who are relatives, as defined herein, at the time this By-Law is enacted, shall be entitled to remain in office for the balance of their terms.

In the event two or more relatives are simultaneously elected to the Board, all relatives, with the exception of the individual receiving the largest number of votes shall be disqualified from the election and the seat vacated by the disqualification shall be awarded to the non-relative with the next largest number of votes.

SECTION 2: The Board of Directors shall meet within ten days after the annual election of directors and shall elect a President and Vice-President from among themselves and a Secretary and a Treasurer, who need not be a member of the Board of Directors, each of whom shall hold office until the next annual meeting and until election and qualification of his successor unless sooner removed by death, resignation or for cause.

SECTION 3: If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification or otherwise, except by removal from office, a majority of the remaining directors, though less than a quorum shall, by a majority vote, choose a successor who shall hold office until the next regular meeting of the members of the Corporation at which time the members shall elect a director for the unexpired term of terms, provided that in the call of such regular meeting a notice of such election shall be given.

SECTION 4: A majority of the Board of Directors shall constitute a quorum at any meeting of the Board.

SECTION 5: Compensation of officers may be fixed at any regular or special meeting of the Board of Directors. Directors shall receive no compensation for their services as such.

SECTION 6: Officers and directors may be removed from office for good cause in the following manner: Any member, officer or director may present charges against a director or officer by filing them in writing with the Secretary of the Corporation. If presented by a member, the charges must be accompanied by a petition signed by ten percent of the members of the Corporation.

Such removal shall be voted on at the next regular or special meeting of the members present. The director or officer against whom such charges have been presented shall be informed, in writing, of such charges five days prior to the meeting; the person or persons presenting such charges shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses and the person against whom the charges are made shall have the same opportunity. If the removal of a director is approved, such action shall also vacate any other office held by the removed director in the Corporation. A vacancy in any office thus created shall be filled by the directors from among their number so constituted after the vacancy in the Board has been filled. A Director cannot miss more than 1/4 (25%) of total regular meetings unless due to special circumstances. Said Director may be reinstated for good cause shown. If a director is absent four (4) or more regular board meetings in succession, he or she will be disqualified and will be automatically removed from office. In this case, the said director may or may not be reinstated by action of the Board of Directors.

SECTION 7: Every Director and Officer of the Company shall be indemnified by the Company to the full extent permitted by law against all expenses and liabilities, including attorney's fees reasonably incurred by or imposed upon him/her, in connection with any proceedings or any settlement thereof, regardless of whether the acts leading to such proceedings occurred before or after the date of adoption of this By-Law, to which he/she may be a party or in which he/she may become involved by reason of his/her being or having been a Director or Officer at the time such expenses are incurred, except in such cases where the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties; provided, that all settlements must be approved by the Board of Directors as being in the best interests of the Corporation.

SECTION 8: No Director, Officer or employee of the Corporation to whom authority to employ, promote or advance individuals has been delegated, shall employ, promote or advance, in or to a position in the Corporation, any individual who is a relative (as defined in Article VIII, Section 1 herein) of the Officer, Director or employee.

ARTICLE IX

DUTIES OF DIRECTORS

SECTION 1: The Board of Directors subject to restrictions of law, the Charter, or these By-Laws, shall exercise all of the powers of the Corporation, and without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board of Directors shall have, and are hereby given, full power and authority (to be exercised by resolution duly adopted by the Board) in respect to the matters and as herein after set forth:

- A. To pass upon the qualifications of members, and to cause to be issued appropriate certificates of membership.
- B. To select and appoint all officers, agents, or employees of the Corporation or remove such agents or employees of the Corporation for just cause, prescribe such duties and designate such powers as may not be inconsistent with these By-Laws, fix their compensation and pay for faithful services.
- C. To borrow from any source, money, goods or services and to make and issue notes and other negotiable and transferable instruments, mortgages, deed of trust, and trust agreements and to do every act and thing necessary to effectuate the same.
- D. To prescribe, adopt and amend, from time to time, such equitable uniform rules and regulations as, in their discretion, may be deemed necessary, or convenient for the conduct of the business and affairs of the Corporation and the guidance and control of its officers and

employees, and to prescribe penalties for the breach thereof.

(26)

E. To order, at least once each year, an audit of the books and accounts of the Corporation by a competent certified public accountant. The report prepared by such accountant shall be submitted to the members of the Corporation at their annual meeting, together with a proposed budget for the ensuing year. Copies of such audits and budgets shall be submitted to any parties as may be required by other agreements.

F. To fix the charges, rates and connection fees, to be paid by each member for services rendered by the Corporation to him, the time of payment and the manner of collection.

G. To require all officers, agents and employees charged with responsibility for the custody of any of the funds of the Corporation to give adequate bonds the cost thereof to be paid by the Corporation, and it shall be mandatory upon the directors to so require.

H. To select one or more banks or savings and loan associations, to act as depositories of the funds of the Corporation and to determine the manner of receiving, depositing and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks or savings and loan associations and the person or persons signing such checks and the form thereof at will, except that no bank or savings and loan association may be so designated unless such deposits are protected by an agency of the United States of America, such as the Federal Deposit Insurance Corporation or similar agency.

I. With the approval of the majority of the members present at any regular or special meeting, to levy assessments against the membership certificates of the Corporation and to enforce the collection of such assessments by the termination of delinquent certificates. The Board of Directors shall have the option to terminate any membership certificate on which assessment was due, provided that the Corporation must give the member at least thirty days written notice at the address of the member on the books of the Corporation, of its intention to terminate the certificate if the assessment is not paid.

ARTICLE X

DUTIES OF OFFICERS

SECTION 1: Duties of President: The President shall preside over all meetings of the Corporation and the Board of Directors, call special meetings of the members and of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the Corporation as he may be authorized or directed to sign by the Board of Directors, provided the Board of Directors may

(27)

authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors.

SECTION 2: Duties of the Vice-President: In the absence or disability of the President, the Vice-President shall perform the duties of the President, provided however, that in case of death resignation or disability of the President, the Board of Directors may declare the office of President vacant and elect a successor.

SECTION 3: Duties of the Secretary: The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the books and records of the Corporation. He shall sign all membership certificates with the President and such other papers pertaining to the Corporation as he may be authorized or directed to do so by the Board of Directors. He shall serve all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to this office to the members at the annual meeting. He shall keep the corporate seal and membership certificates, records of the Corporation, complete and counter sign all certificates issued and affix said corporate seal to all papers requiring seal. He shall keep a proper membership certificate record, showing the name of each member of the Corporation, address and date of issuance, surrender, cancellation or forfeiture. He shall make all reports required by law and shall perform such other duties as may be required of him by the Corporation of the Board of Directors. Upon the election of his successor, the Secretary shall turn over to him all books and other property belonging to the Corporation that he may have in his possession.

SECTION 4: Duties of the Treasurer: He shall perform such duties with respect to the finances of the Corporation as may be prescribed by the Board of Directors.

ARTICLE XI

BENEFITS AND DUTIES OF MEMBERS

SECTION 1: The Corporation will install, maintain and operate a main distribution pipe line or lines from the source of water supply and service lines from the main distribution pipe line or lines to the property line of each member qualifying for water service from the Corporation for each membership certificate held by such member at which points, designated as delivery points, meters to be purchased, installed, owned and maintained by the Corporation shall be placed. The cost of the service line from its main distribution line or lines, shall be paid by the Corporation. The Corporation will also purchase and install a cut-off valve to be owned and maintained by the Corporation and to be installed on some portion of the service line owned by the Corporation. The Corporation shall have the sole and exclusive right to use such

(28)

cut-off valve to turn it on and off.

SECTION 2: Each member shall be entitled to purchase from the Corporation, pursuant to such agreements as may from time to time be provided and required by the Corporation, such water for domestic, commercial, agricultural, industrial or other purposes as a member may desire, subject, however, to the provisions of the By-Laws and to such rules and regulations as may be prescribed by the Board of Directors. Each member shall be entitled to have delivered to him through a single service line for each membership certificate only such water as may be necessary to supply the needs of such member, including his family, business, agricultural, or industrial requirements. The water delivered through each service line shall be metered and the charges for such water shall be determined separately, irrespective of the number of service lines owned by a member.

SECTION 3: In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Corporation may pro-rate the water available among the various members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering the use of water for commercial, agricultural or industrial purposes by particular members and require adherence thereto or prohibit the use of water for commercial, agricultural or industrial purposes; provided that if at any time the total water supply shall be insufficient to meet all of the needs of all of the members for domestic, livestock, commercial, agricultural, or industrial purposes, the Corporation must first satisfy all of the members for domestic purposes before supplying any water for livestock purposes and must satisfy all of the needs of all of the members for domestic and livestock purposes before supplying any water for commercial and industrial purposes.

SECTION 4: The Board of Directors shall be authorized to require each member to enter into a Water Users and/or Wastewater Service Agreement which shall embody the principles set forth in the foregoing sections of this article.

SECTION 5: The Corporation may install, buy, maintain, supervise, and operate one or more sewer plants within the Bonita Springs Utilities, Inc. franchise area in a lawful manner. Each member shall be entitled to purchase sewer service from the Corporation, pursuant to such agreements as may from time to time be provided and required by the Corporation; subject, however, to availability, proximity to sewer facilities, the provisions of these By-Laws and such Rules and Regulations as may be prescribed by the Board of Directors. Each member receiving sewer service shall be entitled to the same benefits as members receiving water service, including credit for capital furnished through patronage of the sewer system. The Corporation will install, maintain and operate the main collection and transmission lines connecting the customer service lines to the treatment and disposal facilities operated by the Corporation.

ARTICLE XII

NOT-FOR-PROFIT CORPORATION

SECTION 1: The Corporation shall at all times be operated on a cooperative not-for-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Corporation on any capital furnished by its members.

SECTION 2: In the furnishing of water, sewer, and other services, the Corporation's operations shall be so conducted that all members will through their patronage, furnish capital for the Corporation. In order to induce patronage and to assure that the Corporation will operate on a not-for-profit basis the Corporation is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of water, sewer, or other services in excess of operating costs and expenses properly chargeable against the furnishing of such services. All such amounts in excess of operating costs and expenses at the moment of receipt by the Corporation are received with the understanding that they are furnished by the members as capital.

The Corporation is obligated to pay by credits to a capital account for each member all such amounts in excess of operating costs and expenses. The books and records of the Corporation shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital account of each member, and the Corporation shall within a reasonable time after the close of the fiscal year notify each member of the amount of capital so credited to his account; provided that individual notices of such amounts furnished by each member shall not be required if the Corporation notifies all members of the aggregate amount of such excess and provides a clear explanation how each member may compute and determine for himself the specific amount of capital so credited to him. All such amounts credited to the capital account of any member shall have the same status as though they had been paid to the member in cash in pursuance of a legal obligation to do so and the member had then furnished the Corporation corresponding amounts for capital.

SECTION 3: All amounts received by the Corporation from its operations on or prior to December 31, 1987, in excess of costs and expenses and not used to offset losses in 1987 or prior years shall be allocated equally to the members as of December 31, 1987 and any amount so allocated shall be credited to the capital accounts of such members.

SECTION 4: All other amounts received by the Corporation from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its members on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of members, as herein provided.

SECTION 5: In the event of dissolution or liquidation of the Corporation, after all its outstanding indebtedness shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Corporation will not be impaired thereby, the capital then credited to members' accounts and the accounts of former members may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Corporation being first retired.

SECTION 6: Capital credited to the account of each member shall be assignable only on the books of the Corporation pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of such member's premises served by the Corporation unless the Board, acting under policies of general application, shall determine otherwise.

SECTION 7: Notwithstanding any other provision of these By-Laws, the Board of Directors at its discretion, shall have the power at any time upon the death of any member, if the legal representatives of the member's estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these By-Laws, to retire capital credited to any such patron immediately upon such terms and conditions as the Board of Directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Corporation will not be impaired thereby.

SECTION 8: The members of the Corporation, by dealing with the Corporation, acknowledge that the terms and provisions of the Articles of Incorporation and By-Laws shall constitute and be a contract between the Corporation and each member, and both the Corporation and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the By-Laws shall be called to the attention of each member of the Corporation by posting in a conspicuous place in the Corporation's office.

ARTICLE XIII

DISTRIBUTION OF SURPLUS FUNDS UPON DISSOLUTION

SECTION 1: Upon the Corporation's dissolution, after (a) All debts and liabilities of the Corporation shall have been paid, and (b) All capital furnished through patronage shall have been retired as provided in these By-Laws, the remaining property and assets of the Corporation shall be distributed without priority among the members and former members in the proportion

which the patronage of each member or former member from and after January 1, 1988 bears to the total patronage of all members and former members from and after such date, to the date of such dissolution; provided that before making such distribution, if any gain is realized upon dissolution from the sale of any appreciated asset, such gain shall be distributed to all persons who were members during the period the asset was owned by the Corporation in the proportion each such member's patronage bears to the total patronage of all members during such period.

ARTICLE XIV

AMENDMENTS TO BY-LAWS

SECTION 1: These By-Laws may be repealed or amended by a vote of a majority of the members present at any regular meeting of the Corporation, at which a quorum is present, or at any special meeting of the Corporation called for that purpose, notice of which was mailed at least 30 days prior to such meeting. These By-Laws may also be amended or repealed at any meeting of the Board of Directors by the affirmative vote of not less than a majority of the Directors present at a meeting at which a quorum is present, provided notice of such meeting containing a copy of the proposed amendment shall have been given to the Directors, not less than five nor more than ninety days prior thereto; provided, however, that the Board of Directors shall not have the power to alter, amend, or repeal provisions of these By-Laws or adopt new by-law provisions directly relating to the election of the Board of Directors. Any by-law provision adopted by the Board of Directors may be altered, amended or repealed and new provisions adopted by the members in the manner set forth above. The members may prescribe that any by-law provisions adopted by them shall not be altered, amended or repealed by the Board of Directors.

No. 13607

Membership Certificate

IN

BONITA SPRINGS UTILITIES, INC.

A NON-PROFIT CORPORATION
INCORPORATED UNDER THE LAWS
OF THE STATE OF FLORIDA

This is to certify that RAYMOND FRED

Service address 26407 KINGS RD

is a member of the **BONITA SPRINGS UTILITIES, INC.**, and is entitled to its services at the foregoing address subject to the provisions of the Charter, By-Laws and Rules and Regulations of the Corporation.

This Membership Certificate is issued and accepted in accordance with and subject to the conditions and restrictions stipulated in the Charter, By-Laws of the Corporation and Amendments to the same heretofore or hereafter made.

Transfers of Membership Certificates shall be made only upon the books of the Corporation, only to persons eligible to become members, only with the approval of the Board of Directors and only when the member transferring is free from indebtedness to the Corporation, all as more fully set forth in the Charter and By-Laws of the Corporation.

No member of this Corporation shall be entitled to more than one vote at meetings of the members regardless of the number of membership certificates held. Every member upon becoming a member of this Corporation agrees to sign such agreement for the purchase of water and/or sewer service from the Corporation as may from time to time be provided and required by the Corporation.

WITNESS the seal of the Corporation and the signature of its duly authorized officers affixed this

31 MAY 96

Secretary

PRESIDENT

KEEP - FOR YOUR RECORDS



IMPORTANT NOTICE

Bonita Springs Utilities, Inc. is a not-for-profit corporation owned by its members.

The IRS requires the Company each year to notify its members of the prior year's capital earnings which are credited to their account(s). Those earnings are allocated on a patronage basis.

In the event of a dissolution or liquidation of the Corporation, and after all outstanding indebtedness has been paid, capital credits will be retired from the remaining assets of the Company in proportion to each member's patronage.

When a member no longer receives service from the Company, their capital credits do not change and they no longer receive an Annual Capital Account update. However, an inactive member continues to have Capital Account Credit on record, and must keep a current mailing address on file to receive any future distribution of assets based on capital credits.

You may assign your credits to your successor in interest or successor in occupancy by executing an assignment form available at our office.

In the case of a deceased member, the next-of-kin or estate must provide one contact person and mailing address for future correspondence. Although a Capital Account annual update will no longer be provided, information regarding the Account of the deceased will be made available to the contact person upon request.

Questions? - Call or stop by our office at 11860 E. Terry Street
892-0711



Bonita Springs Utilities, Inc.
P.O. Box 2368, Bonita Springs, Florida 33959

Annual Capital Account Credit

CREDITS CANNOT BE APPLIED TO CURRENT BILLINGS

THIS IS NOT A BILL

THE BONITA PROPERTIES
2000 BOURGEOISIERE

BONITA SPRINGS, FL 33959

Customer No. 17024 FY-93

Previous Capital Credit	\$1298.42
Wastewater and/or	
Water Capital Credit	\$176.13
Less Outstanding Balance	\$0.00

Net Capital Credit \$1438.55

BONITA SPRINGS UTILITIES, INC.
P.O. BOX 2368 PHONE 992-0711
BONITA SPRINGS, FL 33959

34

WATER USERS AGREEMENT

Cert# _____

Acct# _____

This agreement, between Bonita Springs Utilities, Inc., a non-profit corporation, organized and existing under and by virtue of the laws of the State of Florida, hereinafter called the Utility, and _____, a member of the Utility, hereinafter called the Member.

Whereas, the member desires to purchase potable water for their own use from the Utility, and to enter into a Water Users Agreement as required by the Bylaws of the Utility.

Now, therefore, in consideration of the mutual covenants, promises, and agreements herein contained, it is hereby understood and agreed:

1. The Utility shall furnish, subject to the limitations hereinafter provided for, such quantity of potable water as the Member may desire in connection with his occupancy of the property listed herein.
2. The Member shall install and maintain at his own expense, a service line which shall begin at the Member's side of point of delivery and extend to the dwelling and other portion of his premises.
3. The Member's service line shall connect with the distribution system of the Utility at the nearest place of desired use by the Member, provided the Utility has determined in advance that the Utility is of sufficient capacity to permit delivery of water at that point.
4. The Member shall pay for such water at such rates, time and place as shall be determined by the Utility.
5. The Utility shall purchase and install a cut-off valve and a water meter in each service. The Utility shall have exclusive right to use such cut-off valve and water meter and to turn it on and off. The Utility retains exclusive ownership and control of both the cut-off valve and water meter.
6. The Member upon paying the ANC fee to the Utility for potable service will be obligated to pay a minimum monthly charge also referred to as a base facility charge from the date of this contract until such time as a meter is installed. Member's failure to pay the minimum charge results in a default against the Member rendering this agreement null and void. Prior to actual meter installation, the Member shall pay the meter connection fee and deposit, if not previously paid.
7. The Utility shall have final jurisdiction in any question of location of any service line connection to its distribution system; shall determine the allocation of water to Members in the event of a water shortage; may shut off the water to a Member who allows a connection or extension to be made to his service line for the purpose of supplying water to another user.
8. The failure of a Member to pay water charges duly imposed shall result in the automatic imposition of the following penalties:
 - A. Non-payment within forty(40) days from the date will result in the water being shut-off from the Member's property.
 - B. In the event it becomes necessary for the Utility to shut off the water from a Member's property for non-payment of water charges, a fee of \$25.00 will be charged for a reconnection of the service during normal work hours; \$30.00 after hours and weekends, plus delinquent unpaid charges.

ANC FEE	= \$ _____	CONNECTION FEE	= \$ _____
SURETY DEPOSIT	= \$ _____	TRANSFER FEE	= \$ _____
OTHER	= \$ _____	TOTAL PAID	= \$ _____

In WITNESS WHEREOF, we have hereunto executed this agreement this _____ day of _____, 19____.

ATTEST:

BONITA SPRINGS UTILITIES, INC.

By: _____ Director

Member

Property covered by this contract: Lot _____ Blk _____ County _____

Street Address _____

Sub _____ Type _____ # of Units _____

35

BONITA SPRINGS UTILITIES, INC.

OWNER # _____

TENANT _____ OWNER _____ NEW INSTALLATION _____

PROPERTY OWNER _____ SS# _____

MAILING ADDRESS _____

_____ PHONE# _____

_____ SS# _____

BILLING NAME _____

BILLING ADDR _____

PHONE# _____

CONTACT PERSON _____

(if different than above)

SERVICE ADDRESS _____

LOT _____ BLOCK _____ PHASE _____ UNIT NUMBER _____

SUBDIVISION NAME _____

If in Pelican Landing or Bonita Bay give subdivision within subdivision.

NUMBER OF UNITS _____

TYPE OF UNIT _____

single/residence _____

commercial _____

1/2 duplex _____

duplex _____

rv _____

multi/family _____

townhouse _____

condo _____

other describe _____

temp const _____

METER SIZE _____

3/4", 1", 2" ETC.

I HEREBY ACKNOWLEDGE THE ABOVE INFORMATION TO BE CORRECT

CUSTOMER SIGNATURE _____

DATE _____

.....
for office use only

W/OW _____

FINAL READ DATE _____

WATER ON/OFF _____

ADDITIONAL INFORMATION _____



Bonita Springs Utilities, Inc.

(36)

26 June 1995

Jay Arend, President
SOUTHERN PINES HOMEOWNERS ASSOC.
11277 North Carolina Drive
Bonita Springs FL 33923

Dear Mr. Arend:

Pursuant to your letter dated May 8th, Bonita Springs Utilities has issued membership certificates to the owner(s) of the property. It is my understanding that the residents rent the individual lots.

In order for residents to obtain a membership certificate, they would need to individually purchase and hold title to a lot. We would then transfer membership from the existing property owner to the new property owner.

If the new property owner should be a corporation or association, they would receive a single vote on matters concerning BSU. The individual stockholders would not be entitled to individual votes.

If you should have any further questions, please do not hesitate to contact me.

Sincerely,

Fred Partin
General Manager

FP/db

SOUTHERN PINES HOMEOWNER'S

of BONITA SPRINGS

August 21, 1995

BEN NELSON, JR.
PRESIDENT
BOARD OF DIRECTORS
BONITA SPRINGS UTILITIES, INC.
PO BOX 2368
BONITA SPRINGS, FL 33959-2368

Dear MR. NELSON:

This letter is our formal request for your corporation, Bonita Springs Utilities, Inc. to issue to our 400+ residents in the Community of Southern Pines, Bonita Springs, FL. 400+ membership Certificates in the name of and for the individual account of each of our residences. Each home billing account of our residents is entitled to such automatic membership which includes the right to participate in all normal corporate membership functions, including but not limited to voting. We have been denied this right for too long and insist that you expedite the issuance of our membership certificates as per the By-Laws of the Bonita Springs Utilities, Inc.

The basis of this request is our belief that you and the Board of Directors of Bonita Springs Utilities, Inc. have deliberately, knowingly and willfully refused our resident's right to become individual Bonita Springs Utilities, Inc. members. It is also our belief that we are entitled to full corporate membership, that your and the Board's actions are depriving us of our right to vote and carry out our corporate responsibilities.

Sincerely,



Owen Northacker
Assist. Secretary/Treasurer
Southern Pines Homeowner's of Bonita Springs, Inc.
11289 North Carolina Drive
Bonita Springs, FL 33923

cc: Ben Nelson, Jr., Hank Hochstetler, Bob McGrath, John Mathes, T. Harvey Haines
Virginia Sumner, Marc Ciaffone, Frank Liles, Jr., Kathy Schwichtenberg, Fred Partin

(38)

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(904) 877-8844

MAILING ADDRESS
POST OFFICE BOX 1587
TALLAHASSEE, FLORIDA 32302-1587
TELESCOPE (904) 888-4088

CHRIS H. BENTLEY, P.A.
JENNIFER E. BRUBAKER
F. MARSHALL DETERING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
ROBERT M. G. ROSE, P.A.
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

November 2, 1995

Mr. Jay Arend
President
Southern Pines Homeowner's
of Bonita Springs
26381 Charlotte Drive
Bonita Springs, Florida 33923

Re: Bonita Springs Utilities, Inc.;
Service to Southern Pines Homeowner's Association
Our File No. 20989.08

Dear Mr. Arend:

I have been asked by our client, Bonita Springs Utilities, Inc., ("BSU") to contact you on behalf of certain residents of Southern Pines who have inquired about membership rights in BSU, a not-for-profit cooperative providing water and wastewater service in Southern Pines.

As I understand it, residents of Southern Pines rent lots from Southern Pines Development Corporation, the owner of the property. The Corporation originally secured service to the property, and continues to deal directly with BSU on matters including new connections. The Corporation was admitted as a member of BSU and enjoys the rights and obligations that membership entails. In dealings with BSU, the actions of the Corporation are directed by M. Tesone, a principal in that company.

As you know, BSU has established a policy that service to a property will afford the property owner membership in the Co-Op. This policy follows the industry practice of assigning responsibility for utility service to the property owner. It is also reasonable that, given utility service is a prerequisite to occupancy, utility membership is among the bundle of rights enjoyed by a party upon acquisition of legal title to real property.

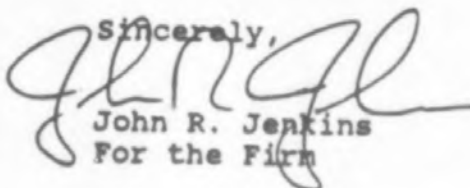
Conversely, it may be argued that, once a property owner has secured utility service, BSU cannot unilaterally deprive the owner of its membership rights in favor of a subsequent, transient user

Mr. Jay Arend
November 2, 1995
Page 2

(3)

of the property. The property owner however, may then assign voting rights, capital credits or other rights to a tenant, shareholder, or subsequent user of the property. This policy also recognizes the fact that a property owner may initially secure service without knowing of subsequent uses or users of the property. This has proven to be a fair method for allocating membership rights. The mere fact that BSU, as a matter of convenience to thousands of landlords and tenants in its service area, agrees to bill tenants directly, does not change the membership status of the property owner.

The concerns of BSU on this issue go beyond the interest of any particular group of residents. Given the transient and varied interests of the many tenants, subtenants, undivided interests, corporate stockholders, and others in its service area, BSU must look to the property owner as the party ultimately responsible for service, and membership in the cooperative. I hope this responds to your concerns.

Sincerely,

John R. Jenkins
For the Firm

JRJ:tas

cc: Mr. Fred Partin
Dan Batchelor, Esquire

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

February 3, 1997

Mr. Jay Arend
26381 Charlotte Drive
Bonita Springs, Florida 34135

Re: Bonita Springs Utilities
Commission Docket No. 961343-WS

Dear Mr. Arend:

On November 12, 1996, the Public Service Commission opened a docket in order to address the petition filed by the Southern Pines Homeowners of Bonita Springs, Inc. (Homeowners) regarding Bonita Springs Utilities, Inc. (BSU). The Homeowners assert that BSU is no longer exempt for Commission regulation because it provides service to customers who are denied membership in the corporation. You submitted the petition on behalf of Homeowners.

BSU has been exempted from Commission regulation pursuant to Section 367.022(7), Florida Statutes, which permits an exemption if the utility is a non-profit corporation provided service to members. However, the Commission will review a situation which indicates that a utility's basis for exemption may have changed. In order to assist our review, the Commission Staff requests that you provide the following information on behalf of the Homeowners:

1. To your knowledge, are there any other homeowner associations with similar concerns regarding membership in BSU?
2. According to the petition, the Homeowners addressed the Lee County Board of County Commissioners regarding this matter. Please provide any documentation regarding the disposition or participation by Lee County.
3. According to the documentation provided, BSU directly bills the residential tenants for service. To your knowledge, does BSU charge the property owners for this billing?

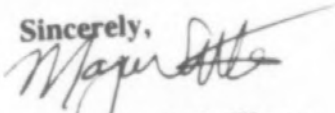
Mr. Jay Arend
February 3, 1997
Page 2

4. Do the residents of Southern Pines contact the property management company or BSU directly regarding billing or service difficulties?
5. Please submit a copy of a typical bill for water and wastewater services for customers in Southern Pines.
6. Please provide any further written documentation related to your complaint that was not attached to the initial petition. Specifically, please provide any correspondence between the homeowners and BSU, and the homeowners and Lee County.

The Commission Staff has sent an inquiry letter to BSU regarding its policies. Staff will gather information from these responses, and will make a recommendation to the Commission regarding the Homeowner's petition.

Please respond to this inquiry on or before March 3, 1997. Please contact me at (904) 413-6226 if you have any questions or concerns.

Sincerely,


Margaret O'Sullivan
Staff Counsel

cc: Mr. John Jenkins, Esquire
Division of Water and Wastewater (Redemann)
Division of Records and Reporting

(42)

Southern Pines Homeowners of Bonita Springs, Inc.

Friday, February 28, 1997

Margaret O'Sullivan, Staff Counsel
Division of Legal Services
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Bonita Springs Utilities, Inc.
Commission Docket No. 961343-WS

Dear Ms. O'Sullivan,

Here are the responses to the questions included in your letter dated February 3, 1997.

1. Yes, we are aware of a similar situation in Imperial Bonita Estates, where there is a mixture of resident-owned and resident-leased building sites. We are unable to obtain Customer and Corporate Membership Lists from BSU to make an accurate determination of what could be other similar communities. When comparing the total number of customers with the total number of Corporation Members, there must be many individuals as well as other groups or classes of customers who are not allowed Membership in the Cooperative.

2. Enclosed are the following documents:

A - A copy of the letter addressed to Jay Arend from Fred Partin dated June 26, 1995

B - A copy of the 3 page letter addressed to each Lee County Commissioner, containing what we believe to be serious charges against Bonita Springs Utilities, Dated August 21, 1985 and received by them on September 6, 1995. Also, page #4 of that letter (which is addendum #1) and a copy of the Index Sheet which was attached to the letters. The Index Sheet lists the sections of Bonita Springs Utilities, Inc., Articles of Incorporation, By-Laws, and Water User Agreements that we believe are being routinely ignored. Copies of those document sections were included in the letter to

the Lee County Commissioners. Also included was a copy of our letter addressed to each BSU Board of Directors Member, as well as to Fred Partin, their General Manager, dated August 21, 1995 and received by BSU on September 7, 1995.

C - A copy of three letters from the law firm of Rose, Sundstrom and Bently to the Lee County Attorney, David Owens dated August 17, August 24 and September 7, 1995.

D - A copy of the BSU Rate Restructuring Petition (with Amendments), prepared and submitted by the Rose, Sundstrom and Bentley law firm which had been attached to the August 17, 1995 letter mentioned in "C" above.

E - A copy of a letter from William Korp, Attorney for Imperial Bonita Estates to Amber Vojak, Attorney for BSU dated August 17, 1995.

F - A copy of a letter from John Jenkins, Attorney for BSU to William Korp dated September 18, 1995.

G - A copy of the prepared text that Owen Northacker used for his opening remarks when he testified before the Lee County Commissioner's Hearing on September 20, 1995.

H - A copy of the audio tape recording, as well as a copy of the Minutes of the Lee County Commissioner's Hearing on September 20, 1995.

I - A copy of the Lee County Resolution Number 95-09-35 which was unanimously approved by the Commissioners on September 20, 1995 giving BSU the Rate Restructuring they were seeking.

J - Copies of three letters from and to Jay Arend, dated October 16, 1995, October 19, 1995 and November 2, 1995 which are a follow up of a meeting Jay Arend attended in Lee County Commissioner Ray Judah's Office on October 10, 1995 at which time, Jay was attempting to get clarification regarding the September 20, 1995 approved Rates granted to BSU.

K - Copies of various Newspaper Articles depicting the favorable treatment and subtle news black outs of things negatively impacting on BSU.

L - Copies of various Financial Statements of BSU.

3. No, the only "billing charge" we are aware of is the newly approved \$2.40 billing charge included in each resident's water and sewer bill from BSU.

Originally, there was an \$8.00 Base Charge, which included the first 2,00 gallons of water used. In October 1995, this was reduced to \$5.10 and the \$2.40 billing charge was added to it. At the same time, the first 2,000 gallons of water used was reduced to 0 (zero) so that now billing for water used starts with zero gallons.

The net effect of this was a \$0.50 reduction in the base water charge and an increase of \$4.70 in water charges if 2,000 gallons of water was used.

Winter residents who do not water their lawns when they are away would, of course save that \$4.70 if no water was used during the billing periods when they are absent from Southern Pines.

4. Most residents would contact BSU directly for billing or service difficulties.

5. Enclosed is a copy of a typical bill for water and wastewater services.

6. At the present time, there is no further written documents to provide, however, as of this date we have not received an answer from BSU regarding our request for BSU Customer and Corporate Membership lists.

The following are some of our comments and observations regarding the events and circumstances that we apply to the above answers to your questions.

Please note the fact that the BSU Attorney prepared the Hearing Resolution for the Lee County Attorney. Also note that at the beginning of the audio tape there is a time limit for the hearing and comments were to be relevant to the hearing, however, the BSU Attorney made sure he impressed on all the Lee County Commissioners, the fact that BSU had just done a big favor for the Commissioners in regard to the Imperial Harbor Estates/Ryan (Docket 950758) water and sewer plants.

On February 19, 1997, the Lee County Commissioners voted unanimously to approve a new rate structure for 43 Parks, effecting 5500 RV sites and 2260 Manufac-

tured Home sites which are water and sewer serviced by Lee County owned and maintained facilities.

The Lee County Commissioners are in a real "conflict of interest" role, as they operate, maintain, control, act as billing agents FOR LEE COUNTY OWNED AND OPERATED WATER AND SEWER FACILITIES AND, AT THE SAME TIME, REGULATE THESE SAME TYPES OF FACILITIES THAT ARE OWNED AND OPERATED BY OTHERS. They were well aware of their own pending rate changes at the time they voted to approve BSU's rate restructuring. How can the Lee County Commissioners be fair and objective in such a dual role?

The Lee County Commissioners should see that "conflict of interest" and should exclude themselves from such a blatant attempt to regulate a type of business they are in themselves!

The Lee County Commissioners have no choice but to "go along" with BSU.

Homeowners and renters like ourselves, will never get a fair deal in such an atmosphere where we are over-charged and OUR MONEY IS BEING REFUNDED TO OTHERS (MEMBERS) who go along with BSU because it is in their best interest to accept the Capital Credit bribe and keep their mouths shut or just aren't aware of all the subtleties of BSU.

Of interest, is the total news blackout that has surrounded our Petition to the Florida PSC. There has been nothing in the newspapers regarding it. The Ft Myers News-Press was holding neighborhood meetings to ask the residents how the News-Press could better serve our community. Our Petition was mentioned at that time. (several months ago). To date, the news blackout is still in effect. Is it any wonder the average citizen feels disenfranchised and ignored by his government and lied to or kept in the dark by our media?

Here we have classes of people, probably thousands, who are being over-charged and with the excess charges they pay, are forced to buy stock in a corporation that is non-profit and a cooperative which is "serving only it's members". That same stock is then given to other classes of customers in the form of Capital Credits, along with that groups own share of the excess profits. So the customers who can't share in the excess profits are not even informed of this discrimination. Of course if they were informed, the fraud would quickly end.

Note BSU's mentioning how everything they do is based "on their desire to be fair". Also note, that in their Rate Restructure Request, the Capital Credits are never mentioned. AREN'T THE CAPITAL CREDITS A DIRECT RESULT OF THE RATES

(46)

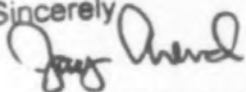
WHICH ARE REQUESTED, APPROVED AND THEN COLLECTED? SHOULDN'T THE CAPITAL CREDITS BE INCLUDED IN ANY RATE REQUEST?

How can you possibly "be fair" when you are deliberately over-charging all your customers and giving the excess funds collected, back to only those who are "Members". The net effect is to reward those Classes of Customers YOU ASSIGN MEMBERSHIP STATUS TO. It's the same as bribing the Member Class and paying them off by stealing from those you discriminate against. Those who probably can least afford the excess, un-refunded charges. The "Renter" is forced to contribute through his water and/or sewer bill, a "kickback" to his "Landlord". The "Landlord gets a payoff for going along with the "System". BSU is running a Government Approved "Shakedown" scheme, much like the "Company Store" of old. Migrant Workers and other folks with no clout just keep on paying the "Kickback" to BSU which redistributes it to those on it's approved list of Capital Credit Holders.

How can any Government agency, of any State in the USA, ignore such out-right thievery from a Non-Profit (which makes a profit), Member Owned (which excludes Members) Cooperative (which is not a Cooperative) licensed and chartered under such false pretenses?

Thank you for giving us this opportunity to present our thoughts on this matter. We fully appreciate your time and effort on our behalf.

Sincerely



Jay Arend, President
Southern Pines Homeowners of Bonita Springs, Inc.

11277 North Carolina Drive

Bonita Springs, Florida 34135-6186

941-947-6099



Bonita Springs Utilities, Inc.

A

(47)

26 June 1995

Jay Arend, President
SOUTHERN PINES HOMEOWNERS ASSOC.
11277 North Carolina Drive
Bonita Springs FL 33923

Dear Mr. Arend:

Pursuant to your letter dated May 8th, Bonita Springs Utilities has issued membership certificates to the owner(s) of the property. It is my understanding that the residents rent the individual lots.

In order for residents to obtain a membership certificate, they would need to individually purchase and hold title to a lot. We would then transfer membership from the existing property owner to the new property owner.

If the new property owner should be a corporation or association, they would receive a single vote on matters concerning BSU. The individual stockholders would not be entitled to individual votes.

If you should have any further questions, please do not hesitate to contact me.

Sincerely,

Fred Partin

Fred Partin
General Manager

FP/db



WILLIAM R. KOPF
BOARD CERTIFIED REAL ESTATE ATTORNEY

POST OFFICE BOX 1614
VENICE, FLORIDA 34284-1614
TELEPHONE (813) 485-8100
FAX (813) 485-9436

August 17, 1995

Amber Vojak, Esquire
Post Office Box 1899
Bonita Springs, Florida 33959-1899

Re: Bonita Springs Utility, Inc. - Customers
at Imperial Bonita Estates - Easement

Dear Amber:

Since meeting with Dan Batchelor and Fred Partin along with Jim Brennan and Bill Waldron back on February 9, 1995, I have reviewed the Articles of Incorporation as amended and Bylaws of Bonita Springs Utility, Inc., Florida Statutes Chapter 367, F.A.C. Rules 25-30, IRC Section 501(c)(12) and case law and interpretative rulings of all the foregoing. I have also spoken with representatives of the Public Service Commission, reviewed the order granting the PSC exemption and consulted with a Big Six accounting firm.

I have been advised that because of denial of membership to the customers of the Cooperative who live in Imperial Bonita Estates, it is not operating within the exemption provided by Florida Statute 367.022(7); because in providing service to my clients who are your customers you are not providing service solely to members. (Please see enclosed order). Further, the PSC has advised that if membership of my clients continues to be denied, the exemption may be revoked and the utility would then be required to apply for a Certificate of Authorization to provide water and wastewater services. This would result in regulation by the PSC.

Moreover, it is apparent that it is the intent of Section 501(c)(12) of the Internal Revenue Code and the Revenue Rulings thereunder that the allowance of an exemption from Federal Income Taxation to the Cooperative is conditioned that capital earnings be distributed (or allocated) to each patron in proportion to their participation in the Cooperative.

Amber Vojak, Esq.
August 17, 1995
Page 2

Each resident of IBE has an individual customer number and has had such a number since service was originally connected. It would logically follow that the continued failure to allow my clients into membership may result in the Cooperative losing its tax exempt status under IRC Section 501(c)(12) and under the laws of Florida because capital earnings are not being allocated to patrons in proportion to their participation.

We have on several occasions requested membership since that February 9 meeting but have received no response other than requests for further information. We are not soliciting a negative response but feel we are entitled to a response and we strongly feel that we are entitled to individual membership.

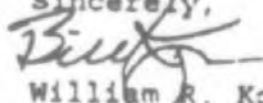
Now to the easement. As you know when we first communicated on this matter, it was through Mr. Batchelor that you returned my call as did Mr. Jenkins. I reviewed the easement and promptly revised it to meet the peculiar circumstances at IBE and faxed the revised easement to you which you promptly approved.

At present, you need a decision from the Board as to whether they are going to execute the easement voluntarily or become a defendant in an eminent domain proceeding.

On behalf of the Board of Directors and members of the Cooperative, let me assure you that we have no interest in causing the Utility any unnecessary expense. However, as their counsellor I am unable to bring myself to advise the Cooperative while our request for individual membership seems to be ignored.

With some 9,000 members who are metered customers of your utility, I absolutely cannot understand why you continue to refuse membership to your 245 individually metered customers who live in Imperial Bonita Estates.

I will be happy to discuss the contents of this letter with you at your convenience.

Sincerely,

William R. Korp

Enclosure
via Fax (941-992-4129) & Regular Mail
cc: Billie Messer, Florida Public Service Comm.
Martha Gordon, Florida Public Service Comm.
Board of Directors, IBE

F:\wp51p\deb\vojak.1tr

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATES
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(904) 877-6555

(50)
RECEIVED
SEP 21 1995
F
WILLIAM R. KORP

CHRIS H. BENTLEY, P.A.
JENNIFER S. BRUBAKER
F. MARSHALL DETSPOND
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
ROBERT M. C. ROSE, P.A.
WILLIAM E. SUNDSTROM, P.A.
DANIEL D. TREMOR, P.A.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1614
TALLAHASSEE, FLORIDA 32301-1614
TELECOPIER (904) 846-4030

September 18, 1995

William R. Korp, Esquire
Abel, Band, Russell, Collier,
Pitchford & Gordon
P.O. Box 1614
Venice, Florida 34284-1614

Re: Bonita Springs Utilities, Inc.;
Service to Imperial Bonita Estates
Our File No. 20989.08

Dear Mr. Korp:

I have been asked by our client, Bonita Springs Utilities, Inc., ("BSU") to respond to your March 13 letter written on behalf of certain residents of Imperial Bonita Estates regarding membership rights in BSU, a water and wastewater non-profit cooperative providing service to Imperial Bonita Estates.

As I understand it, on January 26, 1989 a group of mobile home residents in Imperial Bonita Estates incorporated the I.B.E. Homeowners Association, Inc. on a non-profit basis to, among other things, negotiate for, acquire and operate the Imperial Bonita Estates mobile home park. On June 24, 1994 I.B.E. Homeowners Association, Inc. changed its name to Imperial Bonita Estates Cooperative, Inc. ("Acquisition Corporation"). At approximately that time the Acquisition Corporation completed the acquisition of the assets of Imperial Bonita Properties, Inc. from Martin Newby. The assets included 245 mobile home lots, a 325 lot recreational vehicle park, a club house and certain other amenities. The Acquisition Corporation at some point converted to a cooperative under Chapter 719 Florida Statutes with shares sold to 190 of the 245 mobile home lot residents who now own and control the Corporation.

Since 1974 BSU has provided water and/or wastewater service to Imperial Bonita Estates in one form or another. During this 21 year period, the owner of the property known as Imperial Bonita Estates has enjoyed membership in the BSU cooperative. Uninterrupted service, the right to vote on all matters put to a vote of the general membership, and since 1987, accrual of patronage

(51)

William R. Korp, Esquire
September 18, 1995
Page 2

capital based on usage, have all been rights available to the Acquisition Corporation, Imperial Bonita Properties, Inc., and their predecessors. Also since 1974, the master-metered units on the property (club house, RV park, etc.) as well as the individual-metered units (mobile home lots) have applied for service, and the accounts have been maintained in the name of the company which owned the property at a given point in time. This treatment has been consistent despite the several ownership changes which have occurred over the years.

As you know, BSU has an established policy that service to a property will afford the property owner membership in the Co-Op. This policy follows the industry practice of assigning responsibility for utility service to the property owner. It is also reasonable that, given utility service is a prerequisite to occupancy, utility membership is among the bundle of rights enjoyed by a party upon acquisition of legal title to real property. Conversely, it may be argued that, once a property owner has secured utility service, BSU cannot unilaterally deprive the owner of its membership rights in favor of a subsequent, transient user of the property. The property owner however, may then assign voting rights, capital credits or other rights to a tenant, shareholder, or subsequent user of the property. This policy also recognizes the fact that a property owner may initially secure service without knowing of subsequent uses or users of the property. This has proven to be a fair method for allocating membership rights.

The Acquisition Corporation, as a member of BSU, accrues capital credits based on utility usage within the RV park, mobile home park, clubhouse and other amenities. The Cooperative may allocate patronage capital credits, voting rights, etc., as required by its Article of Incorporation, By-Laws, or otherwise as it sees fit. If a group of shareholders in the Acquisition Corporation seek individual membership, how should the balance of the shareholders be treated? Does the Acquisition Corporation make that decision, or the individual shareholders? If certain shareholders who rent lots from the Acquisition Corporation do not wish to be members of BSU, must they? How do we treat the 55 non-shareholders who rent lots from the Acquisition Corporation? Is the Acquisition Corporation willing to give up its membership rights to non-shareholders? Is the same treatment to be given to RV park residents? To residents who utilize the club house and other amenities? Is BSU required then to treat shareholders of corporations or associations differently to reflect the treatment of the Acquisition Corporation shareholders? Is the same true of

(52)

William R. Korp, Esquire
September 18, 1995
Page 3

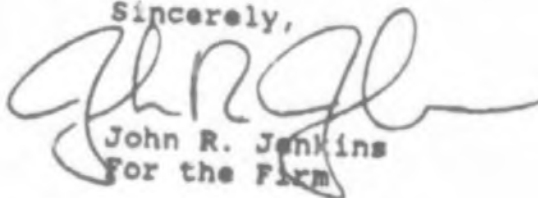
all tenants, subtenants and others as a result of the treatment of the 55 non-shareholder tenants?

As you can see, the concerns of BSU on this issue go beyond the interest of a particular group of residents in Imperial Bonita Estates. While we recognize the tax billing treatment afforded certain parcels in Imperial Bonita Estates pursuant to section 719.114 Florida Statutes, this does not seem to change the fundamental ownership rights the residents have elected to place in the Acquisition Corporation, or the membership rights afforded the owners of this property for over 20 years. I understand the Acquisition Corporation obtained an assignment of capital credits accrued by the former owner, Imperial Bonita Properties, Inc. Therefore, the benefit of prior patronage of the all residents and tenants has been secured by the shareholders of the Acquisition Corporation.

We appreciate the argument by your clients. However, absent direct ownership of their mobile home lots, and given the varying interests of the shareholders, renters, RV park residents and others in Imperial Bonita Estates, BSU feels obligated to continue to recognize the Acquisition Corporation as the property owner and member of BSU.

Should you have any questions or comments regarding this matter, please feel free to call.

Sincerely,


John R. Jenkins
For the Firm

JRJ:tas

cc: Mr. Fred Partin
Dan Batchelor, Esquire
Ms. Billie Messer

24200	09/19/96	10/17/96
BILL DATE	PREVIOUS READ	CURRENT READ
10/29/96	364400	368300
SERVICE ADDRESS		PREVIOUS BALANCE
26381 CHARLOTTE DR		20 CHG 41.25
		1 CHG 24.15
		16.67
CURRENT CHARGES DUE WITHIN 15 DAYS		40.82
USAGE	UNITS	
3900	1	

Bonita Springs Utilities, Inc.
P.O. BOX 2388 • BONITA SPRINGS, FL 34133

ONE QUINCE
BONITA SPRINGS, FL
34138
PERMIT NO. 1

SEE REVERSE SIDE FOR CODES

AMOUNT

ACCOUNTS WITH PAST DUE BALANCE
SUBJECT TO IMMEDIATE SHUT-OFF
AND WILL BE CHARGED A RECONNECT FEE

DO NOT PAY-AFT

ACCOUNT BALANCE

82.07

RETURN THIS STUB WITH PAYMENT
Prev. Balance: 41.25
Current Water: 16.67
Current Sewer: 24.15
Total Due: 82.07

JAY AREND
26381 CHARLOTTE DR NE
BONITA SPRINGS FL 34135

CUSTOMER NO.

24200

DUE DATE

11/13/96



CUSTOMER NO.	SERVICE FROM	SERVICE TO
24200	10/17/96	11/15/96
BILL DATE	PREVIOUS READ	CURRENT READ
11/26/96	368300	372800
SERVICE ADDRESS		PREVIOUS BALANCE
26381 CHARLOTTE DR		20 CHG 82.07
		1 CHG 25.35
		3 PYMT 18.08
CURRENT CHARGES DUE WITHIN 15 DAYS		82.07-
USAGE	UNITS	
4500	1	

Bonita Springs Utilities, Inc.
P.O. BOX 2388 • BONITA SPRINGS, FL 34133

PRIORITIZED
FIRST CLASS MAIL
US POSTAGE PAID
ONE QUINCE
BONITA SPRINGS, FL
34138
PERMIT NO. 1

SEE REVERSE SIDE FOR CODES

AMOUNT

ACCOUNTS WITH PAST DUE BALANCE
SUBJECT TO IMMEDIATE SHUT-OFF
AND WILL BE CHARGED A RECONNECT FEE

DO NOT PAY-AFT

ACCOUNT BALANCE

43.43

RETURN THIS STUB WITH PAYMENT
Prev. Balance: 82.07
Current Water: 18.08
Current Sewer: 25.35
Total Due: 43.43

JAY AREND
26381 CHARLOTTE DR NE
BONITA SPRINGS FL 34135

CUSTOMER NO.

24200

DUE DATE

12/11/96



54

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
254E BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

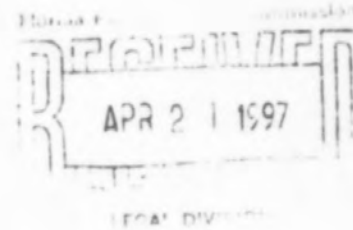
(904) 877-6555

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (904) 896-4029

CHRIS H. BENTLEY, PA
JENNIFER S. BRUBAKER
F. MARSHALL DETERING
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, PA
JOHN R. JENKINS, PA
STEVEN T. MINOLIN, PA
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, PA
DIANE D. TREMOR, PA
JOHN L. WHARTON

April 18, 1997



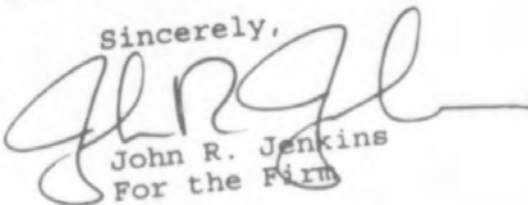
Margaret O'Sullivan, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Bonita Springs Utilities, Inc.;
Our File No. 20989.08

Dear Ms. O'Sullivan:

Enclosed for your consideration is a case which I have found helpful in the past to avoid straying into "hypertechnical" interpretations of not-for-profit status.

Sincerely,


John R. Jenkins
For the Firm

JRJ:sn

Enclosure

cc: Dan Batchelor, Esquire
Mr. Fred Partin

3RD CASE of Level 1 printed in FULL format.

MODERN ELECTRIC WATER CO., Plaintiff, v. UNITED STATES OF
AMERICA, Defendant

MODERN ELEC. WATER CO. v. UNITED STATES

No. C-87-527-RJM

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

1988 U.S. Dist. LEXIS 16679; 88-2 U.S. Tax Cas. (CCH) P9523

August 25, 1988, Decided and Filed

OPINIONBY: [*1]

McNICHOLS

OPINION: ORDER

ROBERT J. McNICHOLS, UNITED STATES DISTRICT JUDGE

The parties' cross-motions for summary judgment in this tax refund dispute were heard on August 22, 1988. Rather than chronicle the events leading up to this litigation in detail, the Court adopts the Joint Statement of Facts agreed to be counsel. n1 CP 10.

n1 It is always a pleasure when responsible attorneys can sit down and stipulate to an objective and comprehensive factual recital. Counsel are to be commended for their efforts.

Tax law, both as written and construed, frequently tends to elevate form over substance, but rarely has the Court seen such a hypertechnical approach as is asserted by the IRS here. Tenants of the land owners served by Modern may or may not be cooperative "members" depending upon which dictionary one reads and also depending upon whether one adopts the definition of its clientele embraced by Modern back in 1905, long before that definition had any relevance for taxation purposes. n2

n2 In fairness to the government, the by-laws do not expressly reference "members." What is defined is the discrete group of individuals who are entitled to service, and that definition embraces all "occupants and residents" and "occupants and owners" of certain described lands. [*2]

What is certain is that if a landlord were to pay the utility bill, and then be reimbursed for same by his tenant, we would not be here, and the government readily concedes as much. n3 Also certain is that because an unpaid utility bill results in a lien attaching to the land served, the landlord obtains a direct economic benefit (or at least direct economic relief) each time his tenant pays the bill. n4 Distilled to its essentials, it is the IRS position that because the tenant serves as a conduit for payment, and because the tenant is not a "member," Modern fails to meet the requirement that 85% of its revenue is derived from its membership. 26 U.S.C. @ 501(c)(12)(A).

56

n3 Illustrative is the following passage from the agreed facts:

Modern Electric also provides electrical and water service to two multi-family apartment houses which are served by only one meter each. The apartment houses contain approximately 50 units. The electrical service is billed to the landowner for all of the apartments in the particular apartment house. The landowner then pays Modern Electric. Notwithstanding that the electricity is used by the tenants, the IRS does not challenge that the payment from the landowner qualifies as "collected from a member." [*3]

n4 Cf., Joint Statement of Facts, supra, at Exhibit E, (Report of Examination at page 3).

Amazingly enough, neither party has been able to cite to any dispositive authority, nor has the Court located a decision on all fours. Common sense and taxation schemes do not always go hand in hand, and what is fair is often whatever Congress says is fair, but in the absence of either decisional or statutory guidance, common sense is what will control the outcome.

Initially, it bears noting that were the parties' roles reversed, and were it a taxpayer who was promoting such a strained interpretation, one wonders how far that taxpayer would get into his presentation before some court would slap him with sanctions. Reliance need not be placed on homilies, however, for there is one Ninth Circuit case which affords at least a modicum of guidance.

In *Peninsula Light Co., Inc. v. United States*, 552 F.2d 878 (9th Cir. 1977), the question was not "who is a member," but "what is a mutual company?" In enacting 26 U.S.C. @ 501(c)(12), Congress did not favor the public or the courts with a definition of either term. Recognizing, at least sub silentio, that any number of definitions might [*4] reasonably attach to the term "mutual company," Peninsula wasted little time in semantical engagement and instead cut to the heart of the matter:

The Government cites no case law or statutory authority which suggests a rule that mutual electric power corporations must credit or distribute surplus on the basis of patronage. In our view, tax-exempt status should be conferred upon mutual organizations which exist and operate without a profit motive. The government correctly points out in its brief that "the basic principle of all cooperative or mutual organizations is the avoidance of entrepreneur profit."

552 F.2d at 880-81 (footnote omitted).

So it is here. Congress expressly provided that exempt status will be conferred only when at least 85% of revenue is derived from "members," but by failing to define that critical term, its meaning is simply left in the air, and the courts are left to choose between those definitions which would defeat exemption for an entity which clearly does not operate for profit, and those definitions which would confer an exemption consistent with the entity's manifest lack of profit motive. Instructive in this regard is a further comment in Peninsula: [*5]

Although it is not a ground for our holding herein, we strongly feel and therefore suggest that because of the long-standing policy of the IRS (some 37 years) upon which many mutuals and cooperatives in many fields of endeavor undoubtedly have relied, the ends sought to be accomplished here by the IRS,

1988 U.S. Dist. LEXIS 16679, *5; 88-2 U.S. Tax Cas. (CCH) P9523

through rule or regulation, ought to come, if at all, from Congressional action and not by "agency legislation" through the offices of the Internal Revenue Service.

552 F.2d at 882.

Modern is one of those many mutuals referred to in Peninsula who have placed long-term reliance on IRS policy of some antiquity. The company has been in business for 83 years, and has enjoyed exempt status since 1939. Audits have been performed over the years, and never has IRS even hinted that too many tenants might spoil the soup. Accordingly, the Court is included to accept Def Modern's definition of "member" as including all owners and occupiers of the discrete area of land served as not only being a reasonable one, but one which serves the spirit of congressional intent in conferring exempt status upon those mutuals and cooperatives which operate without entrepreneurial motive. The major change in [*6] direction urged by the government "ought to come, if at all, from Congressional action and not be 'agency legislation' through the offices of the Internal Revenue Service."

The subject of penalties need not detain us long. First, if the tax liability must fall, so must the penalties. Second, Modern's reasonable reliance on IRS policy is noted above. Third, unlike the situation in Peninsula, the IRS did not even favor Modern with a warning prior to stripping away exempt status. n5 Finally, the Revenue Agent who determined that Modern should no longer enjoy exempt status did not recommend imposition of penalties. Some computer did that "automatically".

n5 As an interesting aside, the IRS did threaten Modern with loss of exempt status in 1970 if it failed to amend its by-laws to provide for equity distribution based on patronage. Modern acquiesced and did so. This was the subject-matter of Peninsula some seven years later when the Court quoted the trial judge below with approval for the comment that "... it just doesn't make any sense at all to me that this mutual, pure mutual should be required to operate as the government directs them to operate." 552 F.2d at 882.

THEREFORE [*7] IT IS ORDERED that:

(1) Plaintiff's Motion for Summary Judgment is GRANTED.

(2) While various monetary amounts are set forth in the Joint Statement of Facts, the Court would feel more comfortable being presented with a breakdown of the precise sums being sought prior to directing entry of judgment. If the parties can agree on an appropriate amount, a stipulation shall be filed within thirty days. If agreement cannot be reached, then each party shall set forth its respective position within thirty days.

(3) The Clerk shall not enter judgment at present but shall return the file to the Court on September 10, 1988 for further consideration.

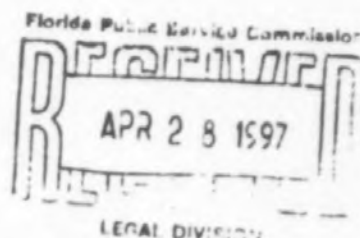
DONE BY THE COURT this 25th day of August, 1988.



Southern Pines Homeowners OF BONITA SPRINGS INC.
 11277 North Carolina Drive, Bonita Springs, Florida 34135

April 24, 1997

Margaret E. O'Sullivan
 Senior Attorney
 Division of Legal Services
 Public Service Commission
 Capital Circle Office Center
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850



RE: Bonita Springs Utilities, Inc.
 Commission Docket No. 961343-WS

Dear Ms. O'Sullivan:

Enclosed please find additional documents that may help staff regarding the above named company and the petition filed against them by Southern Pines Homeowners of Bonita Springs, Inc. The documents are as follows:

1. BSU Articles of Incorporation amended December 16, 1991.
2. BSU By-Laws amended December 16, 1991.
3. BSU form for application of service.
4. BSU Water Use Agreement.
5. Copies of Membership Certificates.
6. Copies of Membership Certificates.
7. Copy of 1994 - 1995 Financial Statement.
8. Copy of 1995 - 1996 Financial Statement with highlighted concerns.

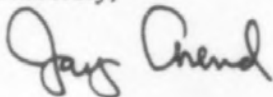
It is our belief that not only are users being denied membership in their corporation, but also that there are other violations of major concern. BSU is presently under the regulation of the Lee County Commissioners. Because Lee County also owns and operates similar utilities, and because they have an option to purchase BSU per the franchise agreement revised November 21, 1990, there is a very serious concern of a conflict of interest. We also believe that BSU does not receive 85% of its total annual income from members only. This they are required to do per their exemption from Federal Income Tax as granted by the I.R.S. under Internal Revenue Code of 1986

Section 501 (C) (12). Those two items, plus discrimination against users who are not members by not being allowed "Capital Credit Certificates" all add up to additional reasons why BSU must come under the jurisdiction of the Florida Public Service Commission. Continued reckless administration of a franchised utility is not in the best interest of its users or members.

The final concern we have is regarding a possible public hearing. We feel it would be in the best interest of the 18,000 plus customers if the hearing, (if there is one), could be held in this area. We feel the burden of expense would be difficult for many of these customers if the hearing is held elsewhere. With that in mind, what would be our obligation, if any, for staff and counsel to hold the hearing in the Bonita Springs area.

We thank you for your time and effort in this matter.

Sincerely,



Jay Arend, President
Southern Pines Homeowners of Bonita Springs, Inc.
26381 Charlotte Drive
Bonita Springs, FL 34135

State of Florida

60

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

February 3, 1997

Mr. John Jenkins
Rose, Sundstrom & Bentley
Post Office Box 1567
Tallahassee, FL 32302-1567

Re: Bonita Springs Utilities
Commission Docket No. 961343-WS

Dear Mr. Jenkins:

On November 12, 1996, the Public Service Commission opened a docket in order to address a petition filed by the Southern Pines Homeowners of Bonita Springs, Inc. (Homeowners) regarding Bonita Springs Utilities, Inc. (BSU). The Homeowners assert that BSU is no longer exempt for Commission regulation because it provides service to customers who are denied membership in the corporation. The Commission's Division of Records and Reporting has previously forwarded a copy of the petition to your office.

BSU's water system was exempted from Commission regulation by Order No. 5223, issued June 7, 1970, and its wastewater system was exempted by Order No. 24921, issued August 16, 1991. In those orders, the Commission acknowledged that BSU provided service only to its members, which qualified BSU for an exemption pursuant to Section 367.022(7), Florida Statutes.

While BSU is exempt from Commission jurisdiction, the Commission will review any situation which indicates that the basis of a utility's exemption may have changed. Staff will recommend to the Commission whether further investigation or action is required in regards to BSU's exempt status. In reviewing the materials provided by the homeowners, Staff has raised several questions concerning the membership status of BSU's customers:

(6)

Mr. John Jenkins
February 3, 1997
Page 2

1. In your November 2, 1995, letter to Mr. Jay Arend, you indicate that BSU has established a policy that "service to property will afford the property owner membership in the Co-op."

a. Has that policy been established in writing?
If so, please provide a copy of the policy.

b. Is that policy addressed in BSU's articles of incorporation?

2. Does BSU provide water and/or wastewater service to any member who does not own the property being served?

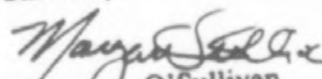
3. According to the documentation, while the property owner retains membership in the Co-op, BSU directly bills the residential tenants for service. Does BSU charge the property owners for this billing?

4. Are inquiries from these tenants regarding billing or service quality addressed by the property owner or BSU?

5. Does BSU consider the tenant or property owner to be responsible for unpaid bills?

Please respond to this inquiry on or before March 3, 1997. Please contact me at (904) 413-6226 if you have any questions or concerns.

Sincerely,


Margaret O'Sullivan
Staff Counsel

cc: Mr. Jay Arend
Division of Water and Wastewater (Redemann)
Division of Records and Reporting

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(904) 877-6555

(62)

CHRIS H. BENTLEY, PA.
JENNIFER S. BRUBAKER
F. MARSHALL DETERING
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, PA.
JOHN R. JENKINS, PA.
STEVEN T. MINDLIN, PA.
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, PA.
DIANE D. TREMOR, PA.
JOHN L. WHARTON

MAILING ADDRESS:
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELECOPIER (904) 856-4029

March 12, 1997

Margaret O'Sullivan, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Re: Bonita Springs Utilities, Inc.;
Commission Docket No. 961343-WS
Our File No. 20989.08

Dear Ms. O'Sullivan:

In response to the number questions in your February 3, 1997 letter, I provide the following:

1. Article 5 of the Company's By-Laws provide in pertinent part:
Service is provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation.
2. It is not the Company's practice to provide water and/or wastewater service to any member who does not own the property being served.
3. There is a billing charge itemized on the bill each month and paid as a part of payment for service.
4. Company personnel attempt to respond to inquiries regarding billing or service quality from tenants or property owners. Property owners may also respond to such inquiries from their tenants.
5. Section 5.0 of the Company's Water Tariff and Section 4.0 of the Wastewater Tariff provide in pertinent part:

(63)

Margaret O'Sullivan, Esq.
March 12, 1997
Page 2

The Company may withhold or discontinue water and/or wastewater service rendered under application made by any member or agent of a household, organization or business unless all prior indebtedness to the Company of such household organization or business for water and/or wastewater service has been settled in full.

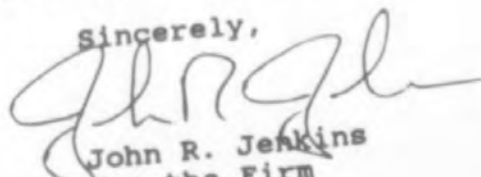
While the Company is attempting to cooperate with the Commission on this matter, for the record I refer you to Commission Order No. 5223 dated June 7, 1970, and Order No. 24921 dated August 16, 1991, each recognizing the exemption of Bonita Springs Utilities, Inc. from PSC jurisdiction. The operation of the Company, as it relates to the exemption, has not changed in any material way since the issuance of these Orders. The Company has relied on this exemption in its business development and long range planning.

Like all utilities, the Company's policies do not please all of the people all of the time. Customers (both members and nonmembers) have a remedy for their concerns through the elected Board of Directors, and the County Commission. As you know, the Company is subject to the jurisdiction of the Lee County Board of County Commissioners. It takes that regulatory jurisdiction seriously, and obtains formal approval pursuant to its Franchise for all rate increases and other substantive matters.

On the basis of its membership structure, the Company has not only obtained an exemption from the PSC, but also from the Internal Revenue Service for federal income tax liability. Further, the Company has operated for over twenty years on this basis, and now serves over 17,000 water customers and 10,000 sewer customers who have a vested interest in that membership structure.

I hope this is responsive to your request.

Sincerely,


John R. Jenkins
For the Firm

JRJ:ts
cc: Dan Batchelor, Esquire
Mr. Fred Partin

STATE OF FLORIDA



Commissioners:
JULIA L. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

April 15, 1997

Mr. John R. Jenkins
Rose, Sundstrom & Bentley, LLP
Post Office Box 1567
Tallahassee, Florida 32302-1567

Re: Docket No. 961343-WS -- Petition by Southern Pines Homeowners of Bonita Springs, Inc. to rescind exemption granted to Bonita Springs Utilities, Inc. in Lee County.

Dear Mr. Jenkins:

Commission Staff has reviewed your March 12, 1997, response regarding the exempt status of Bonita Springs Utilities, Inc. (BSU or the utility). As you are aware, Staff is reviewing a complaint filed by a homeowner's association regarding its members' relationship with the utility. The members of the association own their homes, but not the lots of their subdivision. BSU directly bills the homeowners, and responds to their inquiries regarding billing or service quality. BSU asserts that the owner of the lot or subdivision has membership in BSU, but not the individual homeowners, who for all intent and purpose, are customers of the utility.

According to Section 367.022, Florida Statutes:

The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

...(7) Non-profit corporations, associations or cooperatives providing service solely to members who own and control such non-profit corporations, associations or cooperatives...

By Order No. 24921, issued August 16, 1991, in Docket No. 910604-SU, the Commission granted an exemption for BSU's wastewater system, and affirmed a previous order finding BSU's water system exempt, pursuant to a statute similar to the current Section 367.022(4), Florida Statutes. In that order, the Commission noted that while BSU affirmed that it provided service only to its members, BSU's Articles of Incorporation indicated that service was available to non-members if excess capacity was available. BSU agreed to amend its By-Laws to reflect that it would provide

(65)

John R. Jenkins

Page 2

April 15, 1997

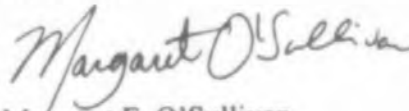
service only to its members. According to the docket file, BSU amended Article V of the By-Laws to indicate that requirement.

In response to Staff's inquiry regarding the definition of membership, you indicated in your March 12, 1997, letter that Article V of BSU's bylaws state in pertinent part that "[s]ervice is provided to a parcel of land based on proper application by the owner and admission to membership by the corporation." This language is not evident in the August, 1991, version of Article V of the By-Laws.

The fact that the utility, and not the subdivision owner, bills the customers and answers billing and service complaints indicates that the homeowners receive service directly from BSU, and not through the subdivision/member of the cooperative. Furthermore, your March 12, 1997, letter states in the second full paragraph on page two that "Customers (both members and nonmembers) have a remedy for their concerns..." This statement indicates that BSU is not "providing service solely to members who own and control" the non-profit corporation as defined by Section 367.022(7).

The Commission Staff recognizes your client's position that it has been exempted from Commission regulation, and that its operation has not materially changed since the exemption order was issued in 1991. However, the factors noted above raise an initial concern over the continued exempt status of BSU. Staff requests that your client provide the most recent version of the By-Laws, if BSU has, as it appears, amended its By-Laws since the Commission issued Order No. 24921. Staff anticipates filing a recommendation regarding this matter on May 8, 1997, to be addressed at the Commission's May 20, 1997, Agenda Conference. Please provide the information request, and any further information your client wishes to submit regarding the above concerns by April 28, 1997.

Sincerely,



Margaret E. O'Sullivan
Senior Attorney

cc: All Parties of Record
Division of Legal Services (Jaber, Johnson)
Division of Water and Wastewater (Messer, Redemann, Williams)
Division of Records and Reporting

(Lde)

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(904) 877-6666

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELECOPIER (904) 886-4029

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERONG
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

May 14, 1997

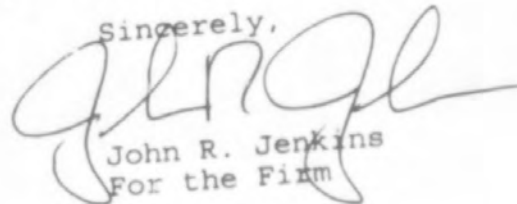
Margaret O'Sullivan, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Bonita Springs Utilities, Inc.;
Commission Docket No. 961343-WS
Our File No. 20989.08

Dear Ms. O'Sullivan:

Pursuant to your request, please find a copy of the By-Laws
for Bonita Springs Utilities, Inc. If I can be of further
assistance, please feel free to call.

Sincerely,


John R. Jenkins
For the Firm

JRJ:sn

Enclosure

cc: Dan Batchelor, Esquire
Mr. Fred Partin

Florida Public Service Commission
MAY 15 1997
LEGAL DIVISION

BY-LAWS
OF
BONITA SPRINGS UTILITIES, INC.

AMENDED 12/29/87
AMENDED 7/10/90
AMENDED 7/23/91
AMENDED 12/16/91
AMENDED 10/95

ARTICLE I
GENERAL PURPOSES

The purposes for which this Corporation is formed, and the powers which it may exercise are set forth in the Charter of the Corporation.

ARTICLE II
NAME AND LOCATION

SECTION 1: The name of this Corporation is BONITA SPRINGS UTILITIES, INC.

SECTION 2: The principal office of this Corporation shall be located in Bonita Springs, Florida, but the Corporation may maintain offices and places of business at such other places within the State as the Board of Directors may determine.

ARTICLE III

SEAL

SECTION 1: The seal of the Corporation shall have inscribed thereon the name of the Corporation and the year of its organization, and shall contain the words, "Corporation Not For Profit".

SECTION 2: The Secretary of the Corporation shall have custody of the seal.

SECTION 3: The seal may be used by causing it or a facsimile thereof to be impressed or reproduced or otherwise affixed to a document.

ARTICLE IV

FISCAL YEAR

The fiscal year of the Corporation shall begin the first day of January in each year.

(69)

ARTICLE V

MEMBERSHIP

SECTION 1: The holders of membership certificates of this Corporation are its members. Any person having reasonable access to the sources of and who is in need of water, sewer, or other services operated by the Corporation and who receives the approval of the Board of Directors may be admitted to membership upon subscribing for or otherwise acquiring a membership certificate and by signing such agreements for service as may be provided and required by the Corporation; provided that no person shall be entitled to service who is not a member, and no person otherwise eligible shall be permitted to subscribe for or acquire a membership certificate of the Corporation if the capacity of the Corporation's water and/or sewer system is exhausted by the needs of its existing members. Service is provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation. Persons not holding a direct ownership interest in the property including, but not limited to, tenants, lessees, sublessees, stockholders, members, parent or subsidiary companies, limited partners, future interest not yet possessory, and others who receive service as a result of the owner's membership status, cannot also be considered members. There shall be no membership fee as such, provided that the Corporation may charge initial connection and other fees upon the issuance or acquisition of each membership certificate.

SECTION 2: Each connection for the services rendered by the Corporation shall entitle the subscriber for such connection to one membership certificate, subject to Section 1 of this Article.

SECTION 3: At any meeting of the members of the Corporation, each member shall be entitled to only one vote upon each matter submitted to a vote, regardless of the number of certificates of membership held, provided the member is in good standing for all certificates held.

SECTION 4: In case of the death of a member, or if a member ceases to be eligible for membership, or a member willfully fails to comply with the By-Laws, or Rules and Regulations of the Corporation, the Board of Directors may terminate his membership by resolution of the Board. A transfer by a member of all membership certificates held by such member shall terminate such member's membership. Any member whose membership is terminated for cause, other than ceasing to be eligible, may appeal the action of the Board of Directors to the members at their next regular or special meeting. Thereafter such member shall be reinstated by the issuance of a new membership certificate only upon such conditions as the Board of Directors may deem necessary or appropriate. Termination of such membership shall result in a disconnection of water and sewer service to the member. Termination shall not result in forfeiture of a member's entitlement to any patronage refund resulting from status as a member pursuant to Article XII of these By-Laws. However, any such refund shall have deducted from it any debt or obligation owed the Corporation by the member.

ARTICLE VI

MEMBERSHIP CERTIFICATES

(70)

SECTION 1: This Corporation shall not have capital stock, but membership shall be represented by membership certificates.

SECTION 2: The membership certificates shall be issued to each member for all service connections to such member and shall be numbered consecutively, in accordance with the order of issue. Each membership certificate shall bear the following statements:

Membership Certificate No. _____
In

Bonita Springs Utilities, Inc.

A not-for-profit corporation incorporated
under the laws of the State of Florida

This is to certify that _____ is a member of the BONITA
Address: _____
SPRINGS UTILITIES, INC., and is entitled to its services at the foregoing address subject to
the provisions of the Charter, By-Laws, and Rules and Regulations of the Corporation.

This membership certificate is issued and accepted in accordance with and subject to the
conditions and restrictions stipulated in the Charter, By-Laws, of the Corporation, and
amendments to the same heretofore or hereafter made.

Transfers of membership certificates shall be made only upon the books of the
Corporation, only to persons eligible to become members, only with the approval of the Board
of Directors and only when the member transferring is free from indebtedness to the
Corporation, all as more fully set forth in the Charter and By-laws of the Corporation.

No member of this Corporation shall be entitled to more than one vote at meetings of the
members, regardless of the type of service or number of membership certificates held. Every
member upon becoming a member of this Corporation agrees to sign such agreement for the
purchase of water and/or sewer from the Corporation.

Witness the seal of the Corporation and the signature of its duly authorized officers
affixed this _____ day of _____, 19____.

Secretary

President

SECTION 3: All transfers of membership certificates shall be made upon the books of the Corporation upon surrender of the certificates covering the same by the holders thereof or by their legal representatives but only with the approval of the Board of Directors and only to persons eligible to become members and only when the transferring member is free from indebtedness to the Corporation. (H)

SECTION 4: Each member agrees to sign such Water Users and/or Wastewater Service Agreements as the Corporation shall from time to time provide and require.

SECTION 5: Certificates not surrendered by members upon termination of membership in the Corporation shall be declared void by the Board of Directors, and upon adoption of such a resolution by the Board, the Secretary shall so note on the books of the Corporation, and thereafter such membership certificate shall be void. Lost certificates may be reissued upon direction and upon such conditions as the Board of Directors may determine.

ARTICLE VII

MEETINGS OF MEMBERS

SECTION 1: The annual meeting of the members of this Corporation shall be held at Bonita Springs Community Center at Bonita Springs, Florida on Tuesday, third week of February of each year, if not a legal holiday, or if a legal holiday, on the next business day following. The place and time of the annual meeting may be changed by the Board of Directors giving notice thereof to each member not less than ten days in advance thereof.

SECTION 2: Special meetings of the members may be called at any time by the action of the Board of Directors and such meeting must be called by the President whenever a petition requesting such meeting is signed by at least ten percent of the members and presented to the President or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except such as is specified in the notice.

SECTION 3: Notice of any special meeting of members of the Corporation may be given by a notice mailed to each member of record, directed to the address shown upon the books of the Corporation, not less than ten nor more than fifty days prior to the meeting. Such a notice shall state the day and hour, place and purpose of the special meeting. No notice of the annual meeting shall be required.

SECTION 4: Each member shall have only one vote upon each matter submitted to a vote at a meeting of the members and the vote of each member shall be equal to that of every other member. Voting by proxy shall be permitted, but it is required that not less than twenty members of the Corporation must be present in person at any meeting to constitute a quorum of the transaction of any business. (72)

SECTION 5: Directors of this Corporation shall be elected at the annual meeting of the members. No cumulative voting shall be allowed.

SECTION 6: The order of business at the regular meetings and, so far as possible at all other meetings, shall be:

1. Calling to order and report of Secretary as to number.
2. Proof of notice of meeting, if required.
3. Reading and action on any unapproved minutes.
4. Reports of officers and committees.
5. Election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE VIII

Directors and Officers

SECTION 1: The business and affairs of the Corporation shall be managed by the Board of Directors. The Board of Directors of this Corporation shall consist of nine members. At each annual meeting the members of the Corporation shall elect for a term of three years the number of directors whose terms of office have expired. No person shall be eligible to become or remain a Director of the Corporation who:

(a) is not a member of and resident in the area served by the Corporation;

(b) is a relative of a Director. "Relative" here shall mean an individual who is related to another Director as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Directors who are relatives, as defined herein, at the time this By-Law is enacted, shall be entitled to remain in office for the balance of their terms.

In the event two or more relatives are simultaneously elected to the Board, all relatives, with the exception of the individual receiving the largest number of votes shall be disqualified from the election and the seat vacated by the disqualification shall be awarded to the non-relative with the next largest number of votes.

73

SECTION 2: The Board of Directors shall meet within ten days after the annual election of directors and shall elect a President and Vice-President from among themselves and a Secretary and a Treasurer, who need not be a member of the Board of Directors, each of whom shall hold office until the next annual meeting and until election and qualification of his successor unless sooner removed by death, resignation or for cause.

SECTION 3: If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification or otherwise, except by removal from office, a majority of the remaining directors, though less than a quorum shall, by a majority vote, choose a successor who shall hold office until the next regular meeting of the members of the Corporation at which time the members shall elect a director for the unexpired term of terms, provided that in the call of such regular meeting a notice of such election shall be given.

SECTION 4: A majority of the Board of Directors shall constitute a quorum at any meeting of the Board.

SECTION 5: Compensation of officers may be fixed at any regular or special meeting of the Board of Directors. Directors shall receive no compensation for their services as such.

SECTION 6: Officers and directors may be removed from office for good cause in the following manner: Any member, officer or director may present charges against a director or officer by filing them in writing with the Secretary of the Corporation. If presented by a member, the charges must be accompanied by a petition signed by ten percent of the members of the Corporation.

Such removal shall be voted on at the next regular or special meeting of the members present. The director or officer against whom such charges have been presented shall be informed, in writing, of such charges five days prior to the meeting; the person or persons presenting such charges shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses and the person against whom the charges are made shall have the same opportunity. If the removal of a director is approved, such action shall also vacate any other office held by the removed director in the Corporation. A vacancy in any office thus created shall be filled by the directors from among their number so constituted after the vacancy in the Board has been filled. A Director cannot miss more than 1/4 (25%) of total regular meetings unless due to special circumstances. Said Director may be reinstated for good cause shown. If a director is absent four (4) or more regular board meetings in succession, he or she will be disqualified and will be automatically removed from office. In this case, the said director may or may not be reinstated by action of the Board of Directors.

74
SECTION 7: Every Director and Officer of the Company shall be indemnified by the Company to the full extent permitted by law against all expenses and liabilities, including attorney's fees reasonably incurred by or imposed upon him/her, in connection with any proceedings or any settlement thereof, regardless of whether the acts leading to such proceedings occurred before or after the date of adoption of this By-Law, to which he/she may be a party or in which he/she may become involved by reason of his/her being or having been a Director or Officer at the time such expenses are incurred, except in such cases where the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties; provided, that all settlements must be approved by the Board of Directors as being in the best interests of the Corporation.

SECTION 8: No Director, Officer or employee of the Corporation to whom authority to employ, promote or advance individuals has been delegated, shall employ, promote or advance, in or to a position in the Corporation, any individual who is a relative (as defined in Article VIII, Section 1 herein) of the Officer, Director or employee.

ARTICLE IX

DUTIES OF DIRECTORS

SECTION 1: The Board of Directors subject to restrictions of law, the Charter, or these By-Laws, shall exercise all of the powers of the Corporation, and without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board of Directors shall have, and are hereby given, full power and authority (to be exercised by resolution duly adopted by the Board) in respect to the matters and as herein after set forth:

A. To pass upon the qualifications of members, and to cause to be issued appropriate certificates of membership.

B. To select and appoint all officers, agents, or employees of the Corporation or remove such agents or employees of the Corporation for just cause, prescribe such duties and designate such powers as may not be inconsistent with these By-Laws, fix their compensation and pay for faithful services.

C. To borrow from any source, money, goods or services and to make and issue notes and other negotiable and transferable instruments, mortgages, deed of trust, and trust agreements and to do every act and thing necessary to effectuate the same.

D. To prescribe, adopt and amend, from time to time, such equitable uniform rules and regulations as, in their discretion, may be deemed necessary, or convenient for the conduct of the business and affairs of the Corporation and the guidance and control of its officers and

employees, and to prescribe penalties for the breach thereof.

E. To order, at least once each year, an audit of the books and accounts of the Corporation by a competent certified public accountant. The report prepared by such accountant shall be submitted to the members of the Corporation at their annual meeting, together with a proposed budget for the ensuing year. Copies of such audits and budgets shall be submitted to any parties as may be required by other agreements.

F. To fix the charges, rates and connection fees, to be paid by each member for services rendered by the Corporation to him, the time of payment and the manner of collection.

G. To require all officers, agents and employees charged with responsibility for the custody of any of the funds of the Corporation to give adequate bonds the cost thereof to be paid by the Corporation, and it shall be mandatory upon the directors to so require.

H. To select one or more banks or savings and loan associations, to act as depositories of the funds of the Corporation and to determine the manner of receiving, depositing and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks or savings and loan associations and the person or persons signing such checks and the form thereof at will, except that no bank or savings and loan association may be so designated unless such deposits are protected by an agency of the United States of America, such as the Federal Deposit Insurance Corporation or similar agency.

I. With the approval of the majority of the members present at any regular or special meeting, to levy assessments against the membership certificates of the Corporation and to enforce the collection of such assessments by the termination of delinquent certificates. The Board of Directors shall have the option to terminate any membership certificate on which assessment was due, provided that the Corporation must give the member at least thirty days written notice at the address of the member on the books of the Corporation, of its intention to terminate the certificate if the assessment is not paid.

ARTICLE X

DUTIES OF OFFICERS

SECTION 1: Duties of President: The President shall preside over all meetings of the Corporation and the Board of Directors, call special meetings of the members and of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the Corporation as he may be authorized or directed to sign by the Board of Directors, provided the Board of Directors may

authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors. (76)

SECTION 2: Duties of the Vice-President: In the absence or disability of the President, the Vice-President shall perform the duties of the President, provided however, that in case of death resignation or disability of the President, the Board of Directors may declare the office of President vacant and elect a successor.

SECTION 3: Duties of the Secretary: The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the books and records of the Corporation. He shall sign all membership certificates with the President and such other papers pertaining to the Corporation as he may be authorized or directed to do so by the Board of Directors. He shall serve all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to this office to the members at the annual meeting. He shall keep the corporate seal and membership certificates, records of the Corporation, complete and counter sign all proper membership certificate record, showing the name of each member of the Corporation, address and date of issuance, surrender, cancellation or forfeiture. He shall make all reports required by law and shall perform such other duties as may be required of him by the Corporation of the Board of Directors. Upon the election of his successor, the Secretary shall turn over to him all books and other property belonging to the Corporation that he may have in his possession.

SECTION 4: Duties of the Treasurer: He shall perform such duties with respect to the finances of the Corporation as may be prescribed by the Board of Directors.

ARTICLE XI

BENEFITS AND DUTIES OF MEMBERS

SECTION 1: The Corporation will install, maintain and operate a main distribution pipe line or lines from the source of water supply and service lines from the main distribution pipe line or lines to the property line of each member qualifying for water service from the Corporation for each membership certificate held by such member at which points, designated as delivery points, meters to be purchased, installed, owned and maintained by the Corporation shall be placed. The cost of the service line from its main distribution line or lines, shall be paid by the Corporation. The Corporation will also purchase and install a cut-off valve to be owned and maintained by the Corporation and to be installed on some portion of the service line owned by the Corporation. The Corporation shall have the sole and exclusive right to use such

cut-off valve to turn it on and off.

SECTION 2: Each member shall be entitled to purchase from the Corporation, pursuant to such agreements as may from time to time be provided and required by the Corporation, such water for domestic, commercial, agricultural, industrial or other purposes as a member may desire, subject, however, to the provisions of the By-Laws and to such rules and regulations as may be prescribed by the Board of Directors. Each member shall be entitled to have delivered to him through a single service line for each membership certificate only such water as may be necessary to supply the needs of such member, including his family, business, agricultural, or industrial requirements. The water delivered through each service line shall be metered and the charges for such water shall be determined separately, irrespective of the number of service lines owned by a member. 77

SECTION 3: In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Corporation may pro-rate the water available among the various members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering the use of water for commercial, agricultural or industrial purposes by particular members and require adherence thereto or prohibit the use of water for commercial, agricultural or industrial purposes; provided that if at any time the total water supply shall be insufficient to meet all of the needs of all of the members for domestic, livestock, commercial, agricultural, or industrial purposes, the Corporation must first satisfy all of the members for domestic purposes before supplying any water for livestock purposes and must satisfy all of the needs of all of the members for domestic and livestock purposes before supplying any water for commercial and industrial purposes.

SECTION 4: The Board of Directors shall be authorized to require each member to enter into a Water Users and/or Wastewater Service Agreement which shall embody the principles set forth in the foregoing sections of this article.

SECTION 5: The Corporation may install, buy, maintain, supervise, and operate one or more sewer plants within the Bonita Springs Utilities, Inc. franchise area in a lawful manner. Each member shall be entitled to purchase sewer service from the Corporation, pursuant to such agreements as may from time to time be provided and required by the Corporation; subject, however, to availability, proximity to sewer facilities, the provisions of these By-Laws and such Rules and Regulations as may be prescribed by the Board of Directors. Each member receiving sewer service shall be entitled to the same benefits as members receiving water service, including credit for capital furnished through patronage of the sewer system. The Corporation will install, maintain and operate the main collection and transmission lines connecting the customer service lines to the treatment and disposal facilities operated by the Corporation.

ARTICLE XII

NOT-FOR-PROFIT CORPORATION

SECTION 1: The Corporation shall at all times be operated on a cooperative not-for-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Corporation on any capital furnished by its members.

SECTION 2: In the furnishing of water, sewer, and other services, the Corporation's operations shall be so conducted that all members will through their patronage, furnish capital for the Corporation. In order to induce patronage and to assure that the Corporation will operate on a not-for-profit basis the Corporation is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of water, sewer, or other services in excess of operating costs and expenses properly chargeable against the furnishing of such services. All such amounts in excess of operating costs and expenses at the moment of receipt by the Corporation are received with the understanding that they are furnished by the members as capital.

The Corporation is obligated to pay by credits to a capital account for each member all such amounts in excess of operating costs and expenses. The books and records of the Corporation shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital account of each member, and the Corporation shall within a reasonable time after the close of the fiscal year notify each member of the amount of capital so credited to his account; provided that individual notices of such amounts furnished by each member shall not be required if the Corporation notifies all members of the aggregate amount of such excess and provides a clear explanation how each member may compute and determine for himself the specific amount of capital so credited to him. All such amounts credited to the capital account of any member shall have the same status as though they had been paid to the member in cash in pursuance of a legal obligation to do so and the member had then furnished the Corporation corresponding amounts for capital.

SECTION 3: All amounts received by the Corporation from its operations on or prior to December 31, 1987, in excess of costs and expenses and not used to offset losses in 1987 or prior years shall be allocated equally to the members as of December 31, 1987 and any amount so allocated shall be credited to the capital accounts of such members.

SECTION 4: All other amounts received by the Corporation from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its members on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of members, as herein provided.

SECTION 5: In the event of dissolution or liquidation of the Corporation, after all its outstanding indebtedness shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Corporation will not be impaired thereby, the capital then credited to members' accounts and the accounts of former members may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Corporation being first retired.

SECTION 6: Capital credited to the account of each member shall be assignable only on the books of the Corporation pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of such member's premises served by the Corporation unless the Board, acting under policies of general application, shall determine otherwise.

SECTION 7: Notwithstanding any other provision of these By-Laws, the Board of Directors at its discretion, shall have the power at any time upon the death of any member, if the legal representatives of the member's estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these By-Laws, to retire capital credited to any such patron immediately upon such terms and conditions as the Board of Directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Corporation will not be impaired thereby.

SECTION 8: The members of the Corporation, by dealing with the Corporation, acknowledge that the terms and provisions of the Articles of Incorporation and By-Laws shall constitute and be a contract between the Corporation and each member, and both the Corporation and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the By-Laws shall be called to the attention of each member of the Corporation by posting in a conspicuous place in the Corporation's office.

ARTICLE XIII

DISTRIBUTION OF SURPLUS FUNDS UPON DISSOLUTION

SECTION 1: Upon the Corporation's dissolution, after (a) All debts and liabilities of the Corporation shall have been paid, and (b) All capital furnished through patronage shall have been retired as provided in these By-Laws, the remaining property and assets of the Corporation shall be distributed without priority among the members and former members in the proportion

which the patronage of each member or former member from and after January 1, 1988 bears to the total patronage of all members and former members from and after such date, to the date of such dissolution; provided that before making such distribution, if any gain is realized upon dissolution from the sale of any appreciated asset, such gain shall be distributed to all persons who were members during the period the asset was owned by the Corporation in the proportion each such member's patronage bears to the total patronage of all members during such period.

ARTICLE XIV

AMENDMENTS TO BY-LAWS

SECTION 1: These By-Laws may be repealed or amended by a vote of a majority of the members present at any regular meeting of the Corporation, at which a quorum is present, or at any special meeting of the Corporation called for that purpose, notice of which was mailed at least 30 days prior to such meeting. These By-Laws may also be amended or repealed at any meeting of the Board of Directors by the affirmative vote of not less than a majority of the Directors present at a meeting at which a quorum is present, provided notice of such meeting containing a copy of the proposed amendment shall have been given to the Directors, not less than five nor more than ninety days prior thereto; provided, however, that the Board of Directors shall not have the power to alter, amend, or repeal provisions of these By-Laws or adopt new by-law provisions directly relating to the election of the Board of Directors. Any by-law provision adopted by the Board of Directors may be altered, amended or repealed and new provisions adopted by the members in the manner set forth above. The members may prescribe that any by-law provisions adopted by them shall not be altered, amended or repealed by the Board of Directors.

(81)

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

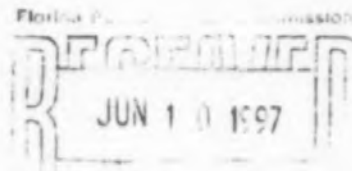
(904) 877-6565

CHRIS H. BENTLEY, PA.
F. MARSHALL DETERDING
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, PA.
JOHN R. JENKINS, PA.
STEVEN T. MINDLIN, PA.
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, PA.
DIANE D. TREMOR, PA.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELECOPIER (904) 866-4025

June 5, 1997

Margaret O'Sullivan Parker, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Re: Bonita Springs Utilities, Inc.
Our File No. 20989.13

Dear Maggie:

I am in receipt of your April 15 letter regarding a Petition by a group of residents in the Southern Pines Mobile Home Park regarding membership in Bonita Springs Utilities, Inc.

In your letter you suggest that the Utility may fail to meet its exemption due to three factors. As to the Utility's policy of answering complaints from tenants, including those which may be voiced at a meeting of the Cooperative's Board of Directors, these can be discontinued in order to maintain the benefits of exempt status. However, this is not in anyone's best interest, and is not an outcome which the Commission would seem to encourage.

As to the direct billing of tenants, this is also a benefit provided to cooperative members. When a property owner first comes to the Cooperative for service, he or she signs a User's Agreement for water or wastewater service, or both. The property owner also provides a deposit for service and is issued a membership certificate in his or her name. That member is then entered into the accounting system for billing purposes. The billing system utilizes two fields. The first contains the member's name and current mailing address. This field is maintained even after the member leaves the utility system, and is considered inactive. At the member's option, a second "bill to" address may be established in the second field in the event the member has a separate billing address, wishes to provide billing to a tenant, utilizes a property management company, wishes to identify a corporate billing entity, or the like. However, no tenant or other "bill to" addressee enters into a User Agreement or provides a deposit to the Company. The property owner/member is always primarily liable for service to the property. In the event of a failure of the "bill to" addressee to keep the account current, the member is copied on all late notices and disconnect notices, and is ultimately responsible for payment of any past due amounts. No new tenant or subsequent "bill to" addressee can receive

Margaret O'Sullivan Parker, Esquire
June 5, 1997
Page 2

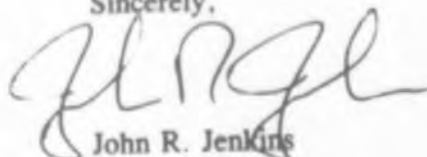
service until the member has brought the account current. Finally, the computer system does not identify the relationship between a member and "bill to" addressee, whether a tenant, guest, former spouse, affiliated corporation or simply an "up north" address, and therefore tenants are not a readily identifiable group for billing purposes.

I am unaware of any Florida Administrative Code rules promulgated by the Public Service Commission regarding the nature of the exemption set forth in Section 367.022(7), Florida Statutes. I note that the standards to which you refer in your April 15 letter are without reference to any rule or case law authority. Section 25-30.210(1), Florida Administrative Code, does provide a definition for "Customer," which is defined as any person who has an agreement to receive service from the utility. This is consistent with the Cooperative's treatment of the property owner as member. Just as noncustomers enjoy the benefits of service to customers (i.g., a guest in a home or a store customer), nonmembers enjoy the benefits of BSU's service to members.

In the absence of PSC rules, one source of authority on this subject is the Internal Revenue Service and tax court decisions with regard to satisfying member requirements for maintaining a federal tax exemption as a cooperative under Section 501(c)(12) of the Internal Revenue Code. In particular, I previously provided to you the case of *Modern Electric Water Company v. United States*, in which the Federal District Court upheld a utility's exemption holding that amounts collected for use from tenants of landlord members constituted member income for purposes of the Section 501(c)(12) requirements. The Court considered the IRS's position to be hypertechnical as the company had a long history of exempt operation, and could have avoided the issue altogether if members had paid bills directly and sought reimbursement from their tenants.

The Petition filed here is not a proposal to require rulemaking on a matter affecting this or any class of utilities, but an individual complaint on a matter for which there is no prescribed rule or regulation. BSU provides service solely to its members who own and control it, consistent with the statutory requirement. The Petition is in the nature of a request for individual relief on a matter as to which there is no rule or regulation, and therefore must fail. If the Commission intends to proceed with rulemaking on this subject, I will advise our client and other utilities which may be affected, as they may wish to participate.

Sincerely,



John R. Jenkins
For the Firm

JRJ:sn
cc:

Dan Batchelor, Esquire
Mr. Fred Partin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of assets }
 from Springs Environmental Systems, Inc. }
 to Bonita Springs Water Systems, Inc. and }
 cancellation of Certificate No. 375-S in }
 Lee County. }

DOCKET NO. 910604-SU

ORDER NO. 24921

ISSUED: 8/16/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

ORDER APPROVING TRANSFER, EXEMPTING BONITA SPRINGS
WATER SYSTEMS, INC. FROM COMMISSION REGULATION,
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On May 30, 1991, an application was filed with this Commission for the transfer of assets from Springs Environmental Systems, Inc. (Springs Environmental) to Bonita Springs Water Systems, Inc. (Bonita Springs). The application, as filed, was deficient. The additional information needed to process the application was filed on June 28, 1991. The closing of the sale to Bonita Springs is scheduled to occur on July 31, 1991.

Bonita Springs is a not-for-profit corporation established June 7, 1970. Order No. 5223, issued on September 21, 1971, found the Bonita Springs's water system to be exempt from Commission regulation, pursuant to Section 367.021(3), Florida Statutes. Bonita Springs is in the process of developing a regional wastewater treatment and disposal system. Upon completion, Bonita Springs contemplates providing service to areas served by approximately 60 small wastewater treatment plants, which will be taken off line as a result.

Application for Transfer

The application for transfer is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. The application included evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(1) (c), Florida Administrative Code.

DOCKETED TRANSFER-DATE

8/30/91 11:15 PM

RECEIVED

ORDER NO.
 DOCKET #
 Page 2

Pr
 30.030.
 applies
 the tis

B
 provid
 geners
 County
 County
 servic
 the 1
 waste
 is be

trans
 has 1
 Envi
 peri

is 1
 hair
 by 1
 dir
 Car
 pay
 pay

on
 go
 it
 to
 Ac
 Co
 t
 i
 e
 n
 f
 1

FPSC

A Publication of FALR, Inc. P.O. Box 388,
Gainesville, FL 32602 (904) 375-0836

91 FPSC 8:183

84

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 2

910604-SU

24921

8/16/91

osition of

2

mission
e, Inc.
s, Inc.
t. The
s filed
ings is

lished
found
ission
tutes.
gional
Bonita
ed by
all be

tion
and
the
as
s.

Proof of notice of the application, as prescribed by Rule 25-30.030, Florida Administrative Code, was provided with the application. No objections to the notice have been received and the time for filing such has expired.

Bonita Springs has been in existence for over 20 years, and provides water service to approximately 13,000 residential and general service water customers in its service territory in Lee County. In 1976, Bonita Springs was franchised by the Board of County Commissioners of Lee County to provide water and wastewater service in southwest Lee County. Bonita Springs was financed by the Farmers Home Administration in the past. The current wastewater development and the acquisition of Springs Environmental is being financed by Industrial Development Revenue Bonds (Bonds).

According to the contract for sale, customer deposits will be transferred to Bonita Springs at closing. Springs Environmental has paid regulatory assessment fees for 1990. However, Springs Environmental has not paid regulatory assessment fees for the period of time from January 1, 1991 to the date of closing.

From our review of the application, we find that the transfer is in the public interest and it is hereby approved. The territory being transferred is described in Attachment A of this Order, which by reference is incorporated herein. Springs Environmental is directed to return Certificate 375-S, to this Commission. Certificate 375-S shall remain active until Springs Environmental pays the appropriate regulatory assessment fees for 1991. Upon payment of the fees, Certificate No. 375-S will be cancelled.

Exemption

As discussed previously, Bonita Springs' water system was exempted from Commission regulation by Order No. 8223, issued September 21, 1971. Bonita Springs filed an affidavit, stating that it is a not-for-profit corporation, that it provides service only to its members, and that it has a franchise with Lee County. According to Bonita Springs' By-Laws, each member of the Corporation is entitled to only one vote upon each matter submitted to a vote. Further, Bonita Springs' Articles of Incorporation indicate that service is available to non-members if there is excess capacity. Sale of excess capacity to non-members would negate the exemption. However, the actual practice of Bonita Springs is to provide service only to members and Bonita Springs has agreed to amend its By-Laws to reflect that it will provide

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 3

service only to its members. Bonita Springs is directed to file a copy of the amendment with the Commission within 30 days of its finalization.

Based on the foregoing, we find that Bonita Springs' provision of wastewater service is exempt from Commission regulation, pursuant to Section 367.022(7), Florida Statutes. Further, we find that the circumstances have not changed since Order No. 9223 was issued in September, 1971, and Bonita Springs' water system continues to be exempt from Commission regulation, pursuant to Section 367.022(7), Florida Statutes. However, Bonita Springs, or its successor in interest, is directed to inform this Commission of any change in circumstances or method of operation within 30 days of such change so that we may review the matter to determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of assets from Springs Environmental Systems, Inc., 3451 Bonita Bay Boulevard, S. W., Suite 202, Bonita Springs, Florida 33923, to Bonita Springs Water System, Inc., 11840 East Terry Street, Bonita Springs, Florida 33923, is hereby approved. It is further

ORDERED that Certificate No. 378-S shall remain active until Springs Environmental pays the appropriate regulatory assessment fees for 1991. Springs Environmental shall return Certificate No. 378-S to this Commission within 30 days of the date of this Order for cancellation upon payment of the regulatory assessment fees. It is further

ORDERED that Bonita Springs Water System, Inc. is exempt from Commission regulation of its water and wastewater systems, pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that Bonita Springs Water System, Inc., shall file a copy of the amendment to its By-Laws as discussed in the body of this Order. It is further

ORDERED that should there be any change in the circumstances or method of operation, Bonita Springs Water System, Inc., or its successor in interest, shall inform this Commission within 30 days of such change. It is further

ORDER #
DOCKET #
Page 4

OK
By
day of

(S E A
ALC

The
120.89(4
administ
is avail
well as
should a
hearing
sought.

Any
in this
filing a
Records
this env
Administ
Court in
First Di
utility
Records
the fill
complete
pursuant
notice o
Florida

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 4

ORDERED that Docket No. 910604-SU is hereby closed.

By ORDER of the Florida Public Service Commission, this 16th
day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

By Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.99(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.